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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 186

SAM K. CARSON, COMMISSIONER OF FINANCE
AND TAXATION, PETITIONER,

vs.

ROANE-ANDERSON COMPANY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF TENNESSEE

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[fol. 1] **IN SUPREME COURT OF TENNESSEE**

Davidson Equity

Reversed

**DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICAL CORPORATION, etc.**

vs.

SAM K. CARSON, COMMISSIONER, etc.

DECREE—March 9, 1951

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that the transactions in controversy in this cause are not subject to the tax provided for in the Tennessee Retailers' Sales Tax Act of 1947 and that the Commissioner of Finance and Taxation of the State of Tennessee is permanently enjoined from seeking to apply said Act to transactions of this character.

It is further ordered and decreed by the Court that the Carbide and Carbon Chemical Corporation et al. have and recover of the State of Tennessee the sum of \$2,148.08 with interest thereon from January 19, 1948 to this date, being \$402.68, in all the sum of \$2,550.76, and all the costs of this cause, all of which will be certified for payment in the manner prescribed by law. (3/9/51.

[fol. 2] IN SUPREME COURT OF TENNESSEE

Davidson Equity

Reversed.

WILSON-WEESNER-WILKINSON COMPANY et al.

VS.

SAM K. CARSON, COMMISSIONER, etc.

DECREE—March 9, 1951

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that the transactions in controversy in this cause are not subject to the tax provided for in the Tennessee Retailers' Tax Act of 1947 and that the Commissioner of Finance and Taxation of the State of Tennessee is permanently enjoined from seeking to apply said Act to transactions of this character.

It is further ordered and decreed by the Court that the Wilson-Weesner-Wilkinson Company et al. have and recover of the State of Tennessee the sum of \$111.87, with interest thereon from January 19, 1948 to this date, being \$21.05, in all the sum of \$132.92, and all the costs in this cause, all of which will be certified for payment in the manner prescribed by law. 3/9/51.

[fo]. 3]

IN SUPREME COURT OF TENNESSEE

Davidson Equity

Reversed

ROANE-ANDERSON COMPANY, etc.

-VS.

SAM K. CARSON, COMMISSIONER, etc.

DECREE—March 9, 1951

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that the transactions in controversy in this cause are not subject to the tax provided for in the Tennessee Retailers' Sales Tax Act of 1947 and that the Commissioner of Finance and Taxation of the State of Tennessee is permanently enjoined from seeking to apply said Act to transactions of this character.

It is further ordered and decreed by the Court that the Roane-Anderson Company have and recover of the State of Tennessee the sum of \$1,264.98 with interest thereon from November 14, 1947 to this date, being \$252.99, in all the sum of \$1,517.97, and all the costs of this cause, all of which will be certified for payment in the manner prescribed by law. 3/9/51.

[fol. 4]

IN SUPREME COURT OF TENNESSEE

Davidson Equity

Reversed.

CARBIDE & CARBON CHEMICAL CORPORATION, etc.

VS.

SAM K. CARSON, COMMISSIONER, etc.

DECREE—March 9, 1951

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that the transactions in controversy in this cause are not subject to the tax provided for in the Tennessee Retailers' Sales Tax Act of 1947 and that the Commissioner of Finance and Taxation of the State of Tennessee is permanently enjoined from seeking to apply said Act to transactions of this character.

It is further ordered and decreed by the Court that the Carbide and Carbon Chemical Corporation have and recover of the State of Tennessee the sum of \$2,383.58 with interest thereon from November 14, 1947 to this date, being \$476.71, in all the sum of \$2,860.29, and all the costs of this cause, all of which will be certified for payment in the manner prescribed by law. 3/9/51.

[fol. 5] IN SUPREME COURT OF TENNESSEE

Davidson Equity

Stay Order

CARBIDE & CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

and

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

and

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

and

WILSON-WEESNER-WILKINSON COMPANY and ROANE-
ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

DECREE—March 16, 1951

On application of James Clarence Evans, Commissioner of Finance and Taxation of the State of Tennessee, appellee in these consolidated causes, that the judgment heretofore entered in these consolidated causes be stayed pending application to the Supreme Court of the United States for the writ of certiorari, and it appearing to the Supreme Court of Tennessee from the statement of counsel and from the application that petition for the writ of certiorari will be filed in the Supreme Court of the United States within the ninety-day period fixed by law, and that counsel representing the

opposing parties in these consolidated causes, except the [fol. 6] intervenor, has been notified of this application for a stay order, and has not appeared to resist the same:

It is ordered that the judgment entered in said consolidated causes be stayed for a period of ninety days from March 9, 1951. 3/16/51.

(S.) A. B. Neil, Chief Justice, Supreme Court of Tennessee.

[fol. 7] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

CARBIDE & CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.
and

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.
and

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.
and

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON
COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

OPINION—March 9, 1951

For Appellants: S. Frank Fowler, Knoxville, Tennessee.

For U. S. Government, Intervenor: T. L. Caudle, Ellis N. Slack, and Berryman Green, all of Washington, D. C.

Of Counsel: Joseph Volpe, Jr., Bennett Boskey, both of Washington, D. C., J. Wallace Ould, Jr. and Harold L. Price, Oak Ridge, Tennessee.

For Commissioner of Finance and Taxation, Appellee: Roy H. Beeler, Attorney General; William F. Barry, Solicitor General; and Allison B. Humphreys, Jr., Advocate General, all of Nashville, Tennessee.

Opinion

[fol. 8] The question for our decision in these consolidated cases is whether or not the appellants are liable for sales taxes and use taxes as applied by Chapter 3 of the Public Acts of 1947, as amended, Retail Sales Tax Statute.

Both of these taxes are privilege taxes and they have been defined by this Court as: "The sales tax imposes upon the seller a tax for the privilege of selling tangible personal property and is required to be paid by the seller, *Hooten v. Carson*, 186 Tenn. 282, 283, 209 S. W. (2d) 273. The use tax is a tax upon the privilege of using, consuming, distributing or storing tangible personal property after it is brought into this State from without this State." *Madison Suburban Utility District v. Carson*, — Tenn. —, 232 S. W. (2d) 277, 280.

The present suits were brought as test cases. During the fall of 1947, the appellants paid under protest a sum of money slightly in excess of \$5,000.00 to the Commissioner of Finance and Taxation, and brought suit, as provided by Tennessee Code sections 1790 et seq., to recover such taxes. It was said in argument that about two million dollars is eventually involved. After suits were instituted and during the progress of the trial, the United States government petitioned to and was allowed to intervene as an intervenor herein. The position taken by the United States government is identical in all respects with [fol. 9] that of the appellants named above. It was stipulated during the progress of the trial that since the suits were instituted, the Commissioner of Finance and Taxation was then James Clarence Evans and the suits were revived as to him.

The chancellor held that the taxes were properly collected by the Commissioner of Finance and Taxation and accordingly dismissed the suits. These suits have been consolidated, were argued together, and it was agreed that we could render one opinion applicable to all, as the questions raised were identical. These suits involve a typical

transaction between the contractors and the vendors wherein the question of whether or not this Tennessee sales tax and use tax are applicable under the factual situation as very thoroughly developed in this large record.

There are numerous assignments of error. As a whole, though, these assignments go to the finding or the failure of the chancellor to find facts according to the contention of the appellants. There are two contentions made by the appellants, both of which were answered contrary to their contention by the chancellor; either of which if answered in the affirmative would sustain the suits in these cases. These contentions are: (1) That the Tennessee Sales Tax Statute as applied to purchases and procurements herein is invalid and an infringement of the Federal constitutional immunity [fol. 10] of the means and instrumentalities employed by the United States to carry on its functions and (2) that if there is no implied Federal constitutional immunity under the facts developed in this case, that then under the terms of Section 9(b) of the Atomic Energy Act, creating this Federal agency, that Congress has exempted the property, income, and activities of the Commission from state or local taxation "in any manner or form."

Why these contentions?

Prior to our entering World War II in December, 1941, scientists were convinced that an atomic weapon could be made. These scientists with a group of others convinced the President of the United States and his advisers that this could be done. Accordingly, the President appointed a committee who in turn further convinced him of the possibilities of such a weapon, and from this the government began the development of facilities to develop such a weapon. It was necessary in the development of atomic energy that great secrecy be kept; that the proceedings toward development of such energy be greatly separated, for security reasons and for reasons of health and safety of the people of the United States, because "probably the largest calculated risk anyone ever took" (Smyth Report) was being undertaken. Thus, rather isolated large areas of land were acquired in different sections of the United States, such as approximately 59,000 acres in Anderson and Roane Counties, Tennessee on the Clinch River; Han- [fol. 11] ford, Washington on the Columbia River; and Los Alamos, New Mexico. Other places for research were acquired and used near the University of Chicago, etc.

As a part of this effort, the government in September, 1942 began to develop the Clinton Engineering Works, commonly called Oak Ridge, which was a unit of the Manhattan District established under the War Powers Act on executive orders of the President of the United States to carry on this research and development of the atomic bomb. The Manhattan District was under the direction of the United States Army Corps of Engineers; and the bomb was the immediate objective.

"A weapon has been developed that is potentially destructive beyond the wildest nightmares of the imagination; a weapon so ideally suited to sudden unannounced attack that a country's major cities might be destroyed overnight by an ostensibly friendly power. This weapon has been created not by the devilish inspiration of some warped genius but by the arduous labor of thousands of normal men and women working for the safety of their country." Smyth Report, page 163, released in August, 1945.

Because of the enormity of the problem that was involved and the fact that no individual or corporation had had any experience in this particular kind of a field, it was necessary for the Army Engineers to employ various and sundry large corporations of America who had the "know-how" in various and sundry scientific fields and other fields which [fol. 12] were necessarily involved in the development of atomic energy. Consequently, the government entered into cost-plus-fixed-fee contracts with these corporations. To mention a few are: Carbide & Carbon Chemical Corporation; Monsanto Chemical Corporation; General Electric Corporation; DuPont Company, and many others. It soon developed that it would be necessary to construct housing facilities for the workers and employees and key personnel of these various companies who were to operate these enormous plants. For instance, at Clinton, Tennessee, an entire new city of some forty or fifty thousand people grew up almost overnight. To operate this city for these people, all of the facilities for a modern city were needed. The Army did not possess the "know-how" to develop such a city but they had had experience with a construction company in New York who knew how to do such a thing, consequently, this construction company was contacted and they in turn formed the Roane-Anderson Company, a Tennessee corporation, for the purpose of operating the Town of Oak

Ridge. Roane-Anderson entered into a cost-plus-fixed-fee contract with the Army for this work. The Carbide & Carbon Chemical Corporation entered into a like contract with the government to operate certain plants at Oak Ridge.

This development under the Army Corps of Engineers was of course designed to achieve the maximum military result which it did, as all of us now know. In the development [fol. 13] of nuclear energy it became apparent to those connected with this development that it would be necessary for the government to maintain some sort of control in this field after the war. As a result of this feeling, recommendations were made to the Congress of the United States who after a full debate passed an Act for the development and control of atomic energy, August 1, 1946. This complete Act is carried in U. S. C. A. 42, Sections 1801 through 1819. By this Act, the Atomic Energy Commission was created, and they constitute a committee having a governmental monopoly in this field of atomic energy. This Act, among other things, declares that "the development and utilization of atomic energy shall, so far as practicable, be directed toward improving public welfare, increasing the standard of living, strengthening free competition in private enterprise, and promoting World peace."

The Atomic Energy Commission, having a right to do so under the Act, saw that their duties were so gigantic and complicated technically that it would be impossible for any one company to handle their undertakings. Accordingly, the Commission has entered into various and sundry cost-plus-fixed-fee contracts with various and sundry contractors who possess the "know-how" in their respective fields. The Commission in this way either directly or through these contractors, carries on a wide and extensive program for the United States government in the field of atomic [fol. 14] energy, including the production of materials for atomic weapons, and the production of radio-active materials for the use and research and development activities relating to atomic energy. The plants selected and established by the Army Corps of Engineers have been continued.

The land and all facilities in the plant at Oak Ridge are wholly owned by the United States government.

The principal contractor of the Commission in Oak Ridge for the operation of its plants there is the appellant Carbide & Carbon Chemical Corporation (hereinafter for short re-

ferred to as Carbide.) The town management contractor for the Town of Oak Ridge is the appellant, Roane-Anderson Company (hereinafter referred to as Roane-Anderson). Carbide operates the production facilities at Oak Ridge and these concentrate on the production of uranium-235, a fissionable material, over which the Commission is given by the Act a monopoly. Carbide also operates various and sundry other plants there. Carbide also operates at present the Oak Ridge National Laboratory, a laboratory for atomic energy research. In the laboratories, research of fundamental importance to production and use of fissionable material is carried on and radioactive isotopes which are proving an enormous benefit to medical, biological, agricultural, and industrial research of all kinds are produced and distributed.

The Town of Oak Ridge, as heretofore said, is located on [fol. 15] Commission-owned site and exists for the sole purpose of providing the necessary community facilities and services to some thirty-one thousand people employed by the Commission and its contractors at the Oak Ridge installation. Most of the necessary town management functions and services are carried out by Roane-Anderson pursuant to its cost-plus-fixed-fee contract. Roane-Anderson operates the normal municipal services, such as utilities, fire protection, garbage disposal, and maintenance of roads and streets, and also oversees the operation of concessions, and performs a number of other services necessary to the welfare of the employees at the atomic energy facilities.

The first two cases brought are for the purpose of testing the use tax where Carbide and Roane-Anderson purchased from an out-of-state vendor. The third and fourth cases are to test the sales tax, the third being where coal was bought by Carbide from the Diamond Coal Mining Company and the other being a machine bought by Roane-Anderson from the Wilson-Weesner-Wilkinson Company.

The first contention made by these appellants, along with the United States Government, is that Carbide and Roane-Anderson are not independent contractors but are agencies or instrumentalities of the United States Government, and are, therefore, not subject to the tax. If the appellants are independent contractors, they would be liable for the tax [fol. 16] because the implied immunity under the United States Constitution would not apply to them for reasons

hereinafter set forth, unless this implied immunity is properly implemented by a Congressional Act. Let us, therefore, first investigate the contracts between these appellants and the Commission and try to determine whether or not they are agencies of the Commission or independent contractors.

The distinctions between an independent contractor and an agent are not always easy to determine, and there is no uniform rule by which they may be differentiated. "Generally, the distinctions between the relation of principal and agent and employer and independent contractor is based on the extent of the control exercised over the employee in the performance of his work, he being an independent contractor if the will of the employer is represented only by the result, but an agent where the employer's will is represented by the means as well as the result." 2 C. J. S., page 1027.

The distinction generally between an independent contractor and an agent "depends upon the intention of the parties as expressed in the contract." *Standard Oil Co. of La. vs Fontenot, La. 4 So. (2d) 634, 643.* We must, therefore, in the first instance look to the contract between these parties for the intention therein expressed rather than look to the Acts of the parties. Of course, every case must be [fol. 17] determined under the contract and the facts of the particular case. It frequently occurs, as it apparently does in the instant case, that contractors have made a contract with a party and have served over a long period of time in such an efficient and excellent manner that the contractor acts somewhat in many capacities as though he were the agent of the person with whom he has contracted. This is especially true in a cost-plus-fixed-fee contract wherein the contractor is reimbursed for any and all expenditures and he is doing the character of work he does in the instant cases. The operations of these contractors are in general separate from the normal scope of business operations of the companies; Roane-Anderson was established for the sole purpose of carrying out its community management activities under contract with the Commission; and Carbide has set up a separate division to carry out its contract with the Commission. The contracts are of a long-term, continuing relationship between government and industry. They do not contemplate the performance of a particular narrowly-defined task for which the outlines are fully known

in advance, but are entered into with knowledge that operations are subject to continual revision, modification, and change, in the light of technical development and as a result of the evolution of Commission policy.

The programs carried on by these contractors are programs for which the Commission is responsible. The nature [fol. 18] and scope of these programs obviously is subject to the determination of the Commission but at the same time the contractor possessing the "know-how" in its own particular field conducts its work according to its determination of how this work should be done. The land, materials, equipment, supplies, plans, designs, and records used in the operation of the facilities, as well as the products of the operation, belong to the Commission. Knowledge, techniques, inventions and discoveries gained from the work are subject to strict control by the Commission. The work of the contractors is subject to close supervision at all stages and at all times by representatives of the Commission who have offices at the Oak Ridge site, and whose chief responsibilities center on the operations carried on by the operating contractor. These Commission representatives establish policy, supervise and inspect the work, review sub-contracts and purchases for approval, inspect and audit the records in accounts of the contractors, and cooperate with the contractors in the solution of the manifold problems connected with the operating of the facilities. The work must be carried on in accordance with the safety and security regulations of the Commission, and those employees of the contractors who have access to restricted data are investigated by the F. B. I., and given security clearance by the Commission. Key personnel of the contractors' organizations may be employed with the approval of the Commission. [fol. 19] The salaries of all of their employees are controlled by policies and standards approved by the Commission and the Commission may direct the dismissal of any such employees whom the Commission deems "incompetent, careless or insubordinate," or whose continued employment is deemed inimical to the public interest.

The contractors are not required to risk their own money in the operation of Commission facilities. This provision of the contract obviously came about by reason of the enormity of the project, the newness of what was being done and of the uncertainty of the result. It is said that "regardless of

what happened the government would pay the bill" and it was on this basis that the contracts were originally made with the various companies in the production of atomic energy. All the contracts have a "hold-harmless" provision and the expenses and procurements are on a reimbursable basis. The Carbide contract specifically provides that Carbide shall not be obligated to use any of its own funds in the performance of work under the contract, and further provides that, upon request of the contractor, the government shall advance monies to be used for carrying out the purposes of the contract. Under this provision, Carbide has used only government money for activities under its contract. Roane-Anderson originally used some of its own money in performing its contract, revenues which it collected from concessionaires and occupants of housing in Oak Ridge [fol. 20] soon made up the greater part of its funds which were used in the contract. Roane-Anderson's contract provided that such monies collected should be used to reduce the cost of the work. Since October, 1948, Roane-Anderson has been receiving advances to carry on its work in the same manner as Carbide.

Most of the materials and supplies necessary to the operation of the Commission facilities are purchased by, or through the contractors. By contract the Commission reserves the right to pay suppliers directly, but customarily permits payments to be made by the contractors, who are then reimbursed by the government. Although the contracts originally provided that title to articles acquired under the contracts should pass to the government at a point designated by the contracting officer, the record shows that as a matter of practice, title to such articles has never been considered to be in the contractor but has always been treated as having passed to the government at the time title passed from the vendor. The language of the contract is contrary to the existing practices of the parties. Since 1948, the contract of Roane-Anderson has provided expressly that in the procurement of supplies necessary to the performance of work under the contract, Roane-Anderson should act as the agent of the government, but "all personnel and labor shall be and remain for all purposes the employees of the Contractor."

[fol. 21] The record shows that ordinarily the vendor looks to the contractor for payment. The custody then is

vested in the contractor who puts it in one of the various storing houses of the Commission and the property is stamped to show that the property belongs to the United States Government and then with another designation of either Carbide or Roane-Anderson. The goods are usually shipped on a government bill of lading or on a commercial bill of lading with a notation to be converted to government bill of lading at destination. This was done to save some cost in shipment expenses. Since 1948, the contractor has paid the Federal transportation tax except where shipment was to the Government on a government purchase order.

The general manager of the Commission in a statement submitted to a congressional committee on February 17, 1949, in part said:

"Operation of our plants and laboratories through established independent contractors not only gives to the Atomic Energy Program substantial benefits from accumulated experience and established facilities; it also establishes the interest and the support of industry and universities for future private development."

Of course, the terming of these contractors, "independent contractors" by Mr. Wilson does not necessarily deter-[fol. 22] mine the question. We must look to the contracts, facts and intent of the parties, etc. as heretofore said. This, though, does give a rather clear statement as to what the intention of the Commission was in making these contracts.

Another indication and illustration as contained in the contracts is that if the bills for the purchase of materials, machinery or equipment or payrolls are not paid promptly by the contractor or the sub-contractor, the contracting officer may in his discretion withhold payments otherwise due, equivalent to the amounts of such unpaid items. The contract also provides that upon the completion of the work that the Government in making settlement with a contractor may withhold any sum necessary to settle claims against the contractor. The contract provides: "The contracting officer shall accept the completed work hereunder with reasonable promptness."

The nature of the plant operation is such that the government does not have on its staff or in its employ the technical means or qualifications to operate the plant. Each

of the production plants is operated by a contractor who has considerable experience in the industrial operation of a chemical separation plant and gaseous diffusion plants, electromagnetic separation plants, etc. The work of Roane-Anderson in city management is a specialty for which they were particularly selected.

We must hold that after making a rather thorough study [fol. 23] of the contracts of Carbide and Roane-Anderson and the facts developed in this record, that these contractors are independent contractors. Omitting for the present any consideration of the provisions of the Atomic Energy Act with reference to the contractors herein, we might say that as far as we know the Congress has never seen fit to pass a general act immunizing general contractors who are doing work for the government wherein the government in the end had to pay the taxes assessed against the contractors. The reason that Congress has not passed such a general act is probably because "the burden of Federal taxation necessarily set an economic limit to the practical operation of the taxing power of the states, and vice versa. Taxation by either the state or the Federal Government affect in some measure the cost of operation of the other." As "neither government may destroy the other or curtail in any substantial manner the exercise of its powers," the taxing power of each, so far as it affects the other, "must receive a practical construction which permits both to function with the minimum of interference, each with the other; and that limitation cannot be so varied or extended as seriously to impair either the taxing power of the government imposing the tax—or the appropriate exercise of the functions of the government affected by it." *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384.

[fol. 24] The recent decisions of the Supreme Court of the United States have held that state taxes on independent contractors with the United States Government were subject to collection and that there was no implied immunity insofar as these independent contractors were concerned. A very excellently reasoned case is that of *James v. Dravo Contracting Company*, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, 114 ALR 318; wherein a state tax on the gross receipts of a contractor with the Federal government was allowed. State sales and use taxes on purchases of materials used by a contractor in performing a cost-plus-fixed-fee contract

with the United States was allowed in State of Alabama v. King & Boozer, 314 U. S. 1, 62 S. Ct. 43, 86 L. Ed. 3, 140 ALR 615; Curry v. U. S., 314 U. S. 14, 62 S. Ct. 48, 86 L. Ed. 9. The Court in King & Boozer case, supra; pointed out that "—the Constitution, *unaided by congressional legislation* (does not prohibit), a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the government, that is but a normal incident of the organization within the same territory of two independent taxing solvents. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added cost, attributable to the tax-[fol. 25]-tion of those who furnish supplies to the government and who have been granted no tax immunity." (Emphasis ours.)

The question is now foreclosed under the authorities last above cited. True, eminent legal minds have differed on the conclusions reached in these cases, as is evidenced by the very strong dissent of Mr. Justice Roberts in which he was joined by Mr. Justice McReynolds, Mr. Justice Sutherland and Mr. Justice Butler in James v. Dravo, supra. This dissent and many authorities therein cited runs somewhat like the argument on behalf of the contractors in their insistence on the first contention made, that is, that the contractors herein had an implied immunity from state taxation because the Federal government was bearing the burden of this tax.

The second contention has given us far greater concern than the first and as we view it, it is the question in the lawsuit.

We assume, since no question is here raised, that the creation of the Atomic Energy Commission, 60 Statute 755, 42 U. S. C. A., 1801-1819, was a constitutional exercise of the congressional power and that the activities of the Commission through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments." Pittman v. Home Owners' Loan Corp.,

[fol. 26] 308 U. S. 21, 60 Sct. 15, 84 L. Ed. 11, 124 ALR, 1263.

It was conceded in the argument that the Congress has the power to protect the instrumentalities thus created by it. This concession must necessarily follow in view of certain provisions of the United States Constitution, as follows:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States—" Article IV, Sec. 3, Cl. 2. It also gives Congress the power "To make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States." Article I, Sec. 8, Cl. 18, U. S. C. A. It makes the laws of the United States enacted pursuant thereto, "the supreme law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." Article VI, Cl. 2.

This power of Congress to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of agencies of the Federal government has been recognized a number of times by the Supreme Court notably [fol. 27] in *Pittman v. Home Owners' Loan Corporation*, supra; *Federal Land Bank v. Bismarck Lumber Co.*, 314 U. S. 95; 62 S. Ct. 1; *U. S. v. Allegheny County*, 322 U. S. 174, 64 S. Ct. 909, 88 L. Ed. 1209, and other cases therein cited.

In the *Pittman* case, it was said by the Court that:

"In the exercise of this power to protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field."

In questions of the kind, whether immunity shall be extended to situations like those in the instant cases is essentially a legislative question, because as we have seen above, in the treatment of the first contention made herein, such immunity is not granted when unaided by congressional legislation. Did the Congress of the United States enact

appropriate legislation to immunize the contractors involved in the instant case?

If such immunity exists, it is derived from Section 9(b) of the Atomic Energy Act (42 U. S. C. A., Sec. 1809). The answer to the question rests primarily upon a proper construction of this section of the Act. The pertinent part thereof is as follows:

"The commission, and the property, ^o*activities*, and income of the Commission, are hereby *expressly exempted from taxation in any manner or form* by any state, county, municipality, or any subdivision thereof." (42 U. S. C. A. Sec. 1809, sub-division b.) (Emphasis ours.)

[fol. 28] Obviously, the question presented is whether the purchase and use of materials and supplies by cost-type contractors of the Atomic Energy Commission in the performance of their contracts are part of the "activities—of the Commission" within the intendment of the provision just quoted and are thereby exempted from taxation by any state, county or subdivision thereof "in any manner or form."

The Atomic Energy Commission as an agency of the executive branch of the United States Government is entitled to all the privileges, immunities and rights of the United States, including that of immunity from state and local taxation: *Graves v. N. Y., ex rel. O'Keefe*, 306 U.S. 466, 59 S. Ct. 593, 83 L. Ed. 927, 120 ALR 1466. This is and would have been true had Section 9(b) of the Act above quoted not been included in the Act.

Section 9(b), in its first three sentences authorizes the Commission under stated conditions and circumstances to make payments to state and local governments (in its discretion) for loss to them of taxes due to the government taking this property and it is noted that there is no submission to state and local taxation. In the fourth and concluding sentence of Section 9(b), Congress provided the exemption above quoted in which it specifically says that the "activities of the Commission shall not be taxed "in any manner or form."

Should we give this exemption a narrow construction or [fol. 29] should the exemption be construed by us so as to give it a scope commensurate with the broad activities carried on by the Commission at its major installations?

The chance for was of the opinion that since Congress

had included the word "agents" in the third sentence of Section 9(b) of the Act, that is the sentence immediately preceding the exemption sentence above quoted, that it was not the intention of Congress to relieve these contractors from taxation. His reasoning is based upon the fact that since 9(b) expressly authorized the Commission to reimburse state and county or local governments for the amount of taxes lost by them due to the acts of the previous parties and the Manhattan District and their agents that then by eliminating the word "agents" out of the exemption provision that this clearly indicated that Congress did not intend to include these contractors in the exemption.

We do not see how the Congress could have chosen a much broader word than it did when it chose the word "activities" to use in its application for those things that were exempt from taxation "in any manner or form." It seems that there was absolutely no reason, in view of using this broad term "activities" to specify individuals or individual actors because the term within itself would cover anything that the Commission was undertaking to do.

Congress prior to the enactment of the Atomic Energy Act and subsequent thereto knew of the services of operating contractors at the major atomic energy installations [fol. 30] and knew that it had been the practice of the Manhattan Engineering District to conduct its activities through these operating contractors. At Oak Ridge, for example, the Monsanto, Carbide and Roane-Anderson and Stone and Webster and numerous other contractors operated in conducting the activities there and these contracts which were entered into then by the Manhattan District were transferred over to the Atomic Energy Commission by executive order of the President. At the Hanford operations the DuPont Company had served as an operating contractor during the war and was succeeded by the General Electric Company. At Los Alamos the University of California had been the operating contractor for the weapons work from the very start of activities at that remote site. Similarly, the University of Chicago had been the operating contractor for the Atomic energy activities centered in the Chicago area. The Carbide people had operated the gaseous diffusion production facilities at Oak Ridge since they were constructed. The Roane-Anderson people were specially formed for the purpose of managing and operating the

Town of Oak Ridge for the Manhattan District. All of these circumstances were well known to the Congress when it had under consideration the various proposals for atomic energy legislation.

At the time hearings were held on the May-Johnson Bill (H.R. 4380, H.R. 4566, 79 Cong., 1st sess.) and the McMahon [fol. 31] Bill (S. 1717, 79 Cong., 1st sess.) Congress had before it the Smyth Report, which we have heretofore referred to and quoted from, which recounted the major role of university and industrial contractors in the development of atomic energy and the production of the atomic bomb under the Manhattan Engineering District.

The then Secretary of War stressed in his testimony on the pending legislation the need for continuing "well-integrated and irreplaceable organization of scientists, executives, engineers, and skilled workers." General Groves, who was in charge of the Manhattan District, also very forcefully pointed out the necessity of the aid of these various and sundry contractors. We can hardly see how the Congress could have done otherwise than to have fully recognized the important contribution these operating contractors had played and would continue to play in the development of atomic energy as is shown by the prominence given their testimony before these congressional committees.

Section 4(c) (2) of the Atomic Energy Act (42 U.S.C.A. Sec. 1804) expressly provided that:

"The Commission is authorized and directed to produce or to provide for the production of fissionable material in its own facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce fissionable material in facilities owned [fol. 32] by the Commission. The Commission is also authorized to enter into research and development contracts authorizing a contractor to produce fissionable material in facilities owned by the Commission to the extent that the production of such fissionable material may be incident to the conduct of research and development activities under such contracts."

It thus seems to us that the Congress intended, in establishing the tax exemption, that the term "activities" used

in this exemption should include the operating contractors. These operating contractors constituted the overwhelming number of employees in developing this great scientific development. If the exemption provision was limited as contended for by the Commissioner of Finance and Taxation it would be virtually meaningless, since the activities at all these large atomic energy installations were being conducted through operating contractors, and a specific statutory immunity in behalf of the Commission as a governing body was not necessary to exempt it from taxation. These contractors represent the great share of the total expenditures made by the Commission and they constitute the major portion of this nation's atomic energy program. Congress could hardly have used language that more aptly describes these operations than the language it used—"activities" of the Commission, Section 9(b). This Section prohibits—of the "activities" of the Commission in any [fol. 33] manner or form. The evident intent was to prohibit states and local governments from imposing a tax burden upon the farflung and continuing activities of the atomic energy program regardless of the means by which they should be carried on. One of the essential activities of the Commission in the maintenance and operating of its facilities is the procurement of supplies.

Presumptively, Congress does not pass or enact useless legislation. What was the purpose of immunizing "The Commission, and the property, activities, and income of the Commission?" These are exempt from taxation under the doctrine of implied immunity. Congress presumably knew that in recent years the courts were not applying the doctrine of implied immunity in various instances where the Government eventually bore the tax. It therefore seems clear that Congress did not intend to leave this question to the Courts but instead legislated on the question in such language as to cover all activities, etc., of the Government-owned instrumentalities.

All the cases refusing to apply the doctrine of implied immunity contain some such statement as: "save as Congress may act to remove them" or "unaided by congressional legislation". All of which clearly imply that if the immunity claimed was aided by congressional legislation, the courts would so apply the immunity sought.

[fol. 34] We gather from Footnote 7 in the Bismarck case,

supra, that when such exemptions are made by Congress that the purpose of these exemption statutes should be broadly construed in favor of the exemption. And the Supreme Court of the United States in *Pittman v. Home Owners' Loan Corporation*, supra, said this:

"We think that this term, (referring to loans) in order to carry out the manifest purpose of the broad exemption, should be construed as covering the entire process of lending, the debts which result therefrom and the mortgages given to the corporation as security."

The term "activities" not being defined by the Act, must be given its usual and ordinary meaning. Webster's New International Dictionary defines the word "activity" as "natural or normal function or operation; as, the activity of a volcano." Another significant dictionary definition is: "The state of action, doing; an exercise of energy or force; an active movement or operation; a physical or gymnastic exercise, an agile performance." And Crabb's English Synonyms says: "Activity respects one's transactions."

The word "activity or activities" of course as applied to various things has various meanings but the ordinary accepted meaning of the term when applied to any particular thing is that it covers everything that the individual or the corporation does. It is so broad that it reaches a circumference of all the acts or doings of a corporation or an [fol. 35] individual. It seems to us that Congress in using this term in this exemption clause did so advisedly and for the purpose of covering everything that the Commission did. By using such a broad term, it of course was not necessary to set out specific instances of different things that the Commission did so as to exempt them because the word activities covered all of these things. We are, therefore, of the opinion that in view of this congressional legislation, the taxes in question are invalid as an unconstitutional intrusion by the State upon the performance of Federal functions. The cases are therefore reversed and a judgment will be entered here for the refund of the taxes sued for. The taxes fall directly upon activities which the Commission is carrying on through its cost reimbursement contractors.

The exemption in Section 9(b) of the Act was intended to protect such activities.

Mr. Justice Gailor and Mr. Justice Tomlinson concur in the above opinion. The Chief Justice and Mr. Justice Prewitt dissent for the reasons stated in a dissent of the Chief Justice.

(S.) Hamilton S. Burnett, J.

[fol. 36]

OPINION OF SUPREME COURT

Davidson Equity (3 Cases)

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance and Taxation, etc.

CONCURRING OPINION

These cases would be controlled, and the propriety of the levy of the sales tax established, by the decisions of the Supreme Court of the United States in Alabama vs King & Boozer, 314 U. S. 1, and Curry vs United States, 314 U. S., 14, 86 L. ed., pp. 3 and 9, except for the Act of Congress creating the Atomic Energy Commission and exempting it, its properties and activities from state and local taxation in language which is all-inclusive (42 U.S.C.A., 1951 Supplement, Section 1809 (b)).

"The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State, county, municipality, or any subdivision thereof."

No question is made of the authority of the Congress [fol. 37] to make the exemption from State and local taxation, and as I define the status of the Complainant operating corporations, Roane-Anderson Company, Carbide and Carbon Chemicals Corporation, and Diamond Coal Mining Company, they are independent contractors who have authority to act as purchasing agents for the Atomic Energy Commission in carrying out the experimental projects at Oak Ridge, Tennessee.

We have defined the Tennessee sales tax as a privilege tax upon retail sales (*Hooten vs Carson*, et al, 186 Tenn., 282) to be paid by the purchaser (Code sec. 1328.26), but if the purchaser, as a disclosed principal, purchases through an agent, the tax is still upon the purchaser, who in the present case, has been exempted from payment of the tax by Act of Congress.

It is the Act of Congress and the all-inclusive exemption of the Atomic Energy Commission from all state and local taxation that distinguishes the position of the contractors in the present case from those in the Alabama cases cited, *supra*. In *Alabama vs King & Boozer*, *supra*, in the course of the opinion on page 6, 86 L. ed., it was stated:

"Congress has declined to pass legislation immunizing from state taxation contractors under 'cost plus' contracts for the construction of governmental projects."

[fol. 38] And in setting out the contract of the United States with the contractors, it was stated to be a term of the contract that the Government undertook to reimburse the contractors,

"for specified expenses including their expenditures for all supplies and materials and 'state or local taxes . . . which the contractor may be required on account of his contract to pay.'" (p. 7.)

In the present case, as stated, the Congress in all-inclusive terms has exempted the Atomic Energy Commission from the payment of all local and state taxation.

My reasons for agreeing with the conclusions reached in the opinion of Justice Burnett, are sufficiently clear from this statement, and no elaboration would serve any useful purpose.

(S.) Gailor, J.

[fol. 39]

— Davidson Equity

Davidson Equity /

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner, etc.

and

WILSON-WEESNER-WILKERSON COMPANY

vs.

SAM K. CARSON, Commissioner, etc.

and

CARBIDE AND CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner, etc.

and

DIAMOND COAL MINING COMPANY

vs.

SAM K. CARSON, Commissioner, etc.

DISSENTING OPINION

I reach a definite conclusion, after full consideration of the record and argument of counsel, that the appellants are "independent contractors" and cannot claim immunity from the state retail sales and use tax. The opinion of Mr. Justice Burnett is well-nigh conclusive of that question and with his conclusion I concur. But I am unable to agree [fol. 40] with his final conclusion that they are exempt from the tax upon theory that they are so much a part of a governmental agency, "The Atomic Energy Commission", that their purchases of materials constitute the "activities" of such governmental agency.

The insistence of able counsel for the appellants is that these contractors, who have been employed to serve the Atomic Commission are exempt from taxation by the ex-

press terms of Section 9(b) of the Atomic Energy Act, which reads as follows:

"In order to render financial assistance to those States and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer [fol. 41] District or their agents. In any such case, any benefit accruing to the state or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any subdivision thereof."

I can conceive of no theory or premise upon which to base a conclusion that the appellants come within the four corners of the above statute if they are properly classified as independent contractors. It is not only conceivable, but quite consistent with reason, that *agents* of the Commission could rightfully claim exemption from taxation on the ground that whatever they do, or contract to do, must be adjudged as an *activity* of the Commission. But even where contractors claim to be agents the Congress should, to avoid doubt and confusion, specifically declare an exemption. In a legal sense, the appellants are not agents of the Atomic Commission.

The argument is made that we should by sheer inference hold that the Congress intended to exempt contractors from the tax. There is nothing in the Act exempting them and this Court should not undertake to apply to them the [fol. 42] doctrine of implied immunity. No one questions

the generally accepted principle, that the possessions, institutions, and *activities* of the Federal government are not subject to any form of state taxation in the absence of express Congressional consent. *U. S. v. County of Allegheny*, 322 U. S. 174, 88 L. ed. 1209.

It is undoubtedly true that the Congress has the power to protect all governmental agencies and instrumentalities from state taxation. But it is a far-reaching and dangerous doctrine to hold that the authority of a sovereign state to levy a tax can be nullified upon the theory of *implied delegated* immunity. It is manifestly unsound to hold that Congress intended to deny to the state its right to levy a constitutional tax upon business enterprises furnishing supplies to a Federal agency merely because it may possibly cast upon the Government some economic burden.

The argument is made that unless the Congress meant to exempt contractors in its use of the word "activities", the statutory exemption is meaningless. I am unable to follow this contention. The Act to which reference is herein made (Section 9(b), Atomic Energy Act) exempts the "activities" of the Commission. The word "activities" should be construed as exempting property that the Commission has acquired. In other words, such resources, both tangible and intangible that may be in its possession and under its control which is devoted to the development of atomic energy. The Special Committee of Congress, [fol. 43] appointed to consider the said Act, made the following report:

"Section 9. Property of the Commission.

"The Commission is to take over all resources of the United States Government devoted to or related to atomic energy development. This includes all atomic weapons, all property of the Manhattan Engineer District, and all patents, materials, plants and facilities, contracts, and information relating primarily to atomic energy. The Commission is authorized to reimburse states and municipalities for loss in taxes incurred through its acquisition of property."

There is no reason for this Court to construe "activities" as providing for an exemption from state taxation when the Congress refused to adopt an amendment which would have expressly exempted contractors from such a tax. In *Stand-*

ard Oil Co. of La. v. Fontenot, 4 So. (2d) 634, 642, it is pointed out by the Court:

"Prior to the passage of Public Act 588 of the 76th Congress, 54 Stat. 265, the language therein, which would have made contractors agents of the government *and would have exempted them from all taxes—federal, state, and local,—was stricken therefrom* in the House [fol. 44] and was concurred in by the Senate. Cong. Rec., Vol. 80, part 7, pages 7532-7535, Amd't. 1205, H. B. 8438; Cong. Rec., Vol. 86, part 7, pages 7646-7648." (Emphasis supplied.)

In Alabama vs. King & Boozer, 314 U. S. 1, 86 L. Ed. 6, the Court, speaking through Mr. Chief Justice Stone, says:

"Congress has declined to pass legislation immunizing from state taxation contractors under 'cost-plus' contracts for the construction of governmental projects. Consequently, the participants in the present transaction enjoy only such tax immunity as is afforded by the Constitution itself, and we are not now concerned with the extent and the appropriate exercise of the power of Congress to free such transactions from state taxation of individuals in such circumstances that the economic burden of the tax is passed on to the national government."

There should be no disagreement upon the proposition that the word "activities" as used in Section 9(b) should be broadly construed. It should be so construed in all those cases where the Congress has expressly declared that a state tax is such a burden upon the particular instrumentality that it amounts to an impairment of the power of government. The contention of the state, while not disputing the foregoing proposition, is that the Court is not authorized to [fol. 45] extend the exemption by *construction* "so as to exempt an independent contractor from non-discriminatory, constitutional excise taxation." The correctness of this contention will not be seriously controverted in the face of the Congress's *express refusal* to provide for an exemption.

I cannot conceive that Congress would ever agree to an exemption of "contractors" from state taxation, as contended for in the case at bar. Is it possible that the Congress, in exempting "activities" of a Federal bureau from

liability for a state tax, intended thereby to exempt every person, firm or corporation who might do business with it pursuant to a written contract? I think not. If that is not an *implied* delegation of immunity, I don't know how to classify it. That the Congress never intended to provide an exemption in such circumstances is not only shown by the Congressional Record, as pointed out in *Standard Oil Co. of La. v. Fontenot*, supra, but also in *Penn Dairies v. Milk Control Com.*, 318 U. S. 261, 87 L. Ed. 748.

The country is now witnessing, and has for a number of years, the vast increase in the number of Federal agencies claiming immunity from state taxation under the specious plea that "we are the Federal government." They seek to extend the immunity, as illustrated by the present appeal, to all whom they may have a contract with them to render some form of service, or furnish them supplies of any kind. If the plea is good it results that Congress has clothed them [fols. 46-4] with attributes of government which is superior to that of a sovereign state. The cases cited on the State's brief, and particularly *Penn Dairies v. Milk Control Com.*, supra, are conclusive of the question that Congress has had no thought of thus paralyzing the taxing authority of State governments.

If, however, I am mistaken in this conclusion, and the State of Tennessee is powerless to collect its just revenues, we should no longer think of "state sovereignty" as it has been known in the country's history for more than a century and a half, but that sovereignty now exists at the whim, and possible caprice, of agencies which are a law unto themselves.

In my opinion the appellants have no right to claim an exemption from the tax in question, in the absence of an express statutory provision, unless it plainly appears that it constitutes an encroachment upon, or interference with, the free exercise of governmental authority.

(S.) Neil, C.J.

Mr. Justice Prewitt concurs in this dissent.

[fol. 5] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY, a corporation organized and existing under the laws of the State of Tennessee, Complainant,
vs.

SAM K. CARSON, Commissioner of Finance & Taxation of the State of Tennessee, with office at Nashville, Tennessee, and individually a citizen and resident of Davidson County, Tennessee, Defendant

ORIGINAL BILL—Filed November 14, 1947

The complainant Roane-Anderson Company shogs to the Court the following facts:

[fol. 6]

I

The complainant is a corporation duly organized and existing under the laws of the State of Tennessee, with its principal office at Oak Ridge in Anderson County, Tennessee.

The defendant Sam K. Carson is the duly appointed and acting Commissioner of Finance and Taxation of the State of Tennessee and as such was and is charged with the collection of all taxes under the Act of the General Assembly of the State of Tennessee known generally as Tennessee Retailer's Sales Tax Act, being Chapter No. 3 of the Public Acts of the year 1947 of the General Assembly of Tennessee; and said defendant promptly entered upon the discharge of his responsibility as collecting officer under said Act and the payments hereinafter described were made to him and received by him in his said capacity.

This is a suit brought to recover certain amounts asserted by said defendant to be due from the complainant under the said Tennessee statute, which amounts the defendant compelled the complainant to pay, although requirement of payment thereof was illegal, complainant not being liable for said tax. The said statute requires the tax to be paid by the 20th day of each month, and this suit is brought for the further purpose of obtaining the adjudication of this Court that said statute and the tax levied thereby do not apply to the complainant in respect to trans-

actions hereinafter described, so that in the future it shall not be necessary for the complainant to bring a suit every month in order to protect its rights.

[fol. 7]

II

On February³ 15, 1944, the complainant entered into a contract with the United States of America, being Contract No. W-7401-ENG-115. Said contract was entered into by the United States Government as an incident to the prosecution of World War Two then in progress; the scope of the action contemplated under said contract was important at that time and remains important at this time, in relation to matters of extremely grave concern to the national welfare, security and defense. Complainant files herewith as Exhibit "A"¹ and by such reference the same is made a part hereof, a full and accurate copy of said contract with the additions thereto and modifications thereof which have become effective from time to time.

III

Complainant promptly entered upon the performance of the said contract, and has ever since been engaged therein and is so engaged at the present time.

IV

The Act of the Congress of the United States known as the "Atomic Energy Act of 1946" (42 U. S. C. A. 1801, et seq.), which became a law in the latter part of the year 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from the Governmental instrumentality which had exercised jurisdiction over and supervision of the operation of the area within Roane and [fol. 8] Anderson Counties, Tennessee, known as the Clinton Engineer Works. The Governmental instrumentality through which said work had been carried on until the transfer to the Atomic Energy Commission was known as Manhattan Engineer District. It is in said area that the complainant maintains its offices and carries on its work under said contract.

The full transfer of properties, authorities, rights, obligations, etc., of the Manhattan Engineer District to the

¹ Please refer to Roane-Anderson Exhibit 1.

Commission created under the Atomic Energy Act of 1946 is provided for and directed by said Act of Congress. Acting pursuant to and in full discharge of the provision of said Act relating thereto the President of the United States has duly issued Executive Order No. 9816 dated December 31, 1946 which has brought about the full transfer intended by Congress under the terms of said Act. Pursuant to and as a result of the said executive order of the President the contract dated February 15, 1944, above referred to became a contract between the Atomic Energy Commission, an instrumentality of the United States of America, and the Complainant; and this change occurred as of midnight December 31, 1946.

V

As a necessary and integral part of the work performed under and course of action required by said contract with the Atomic Energy Commission, all of which work and action was and is an essential and an integral part of the activities of the Atomic Energy Commission in the interest of national welfare, security, and defense, the complainant has continuously purchased property of the kind which is [fol. 9] described as being taxable under the said Tennessee Retailer's Sales Tax Act of 1947, and will continue to purchase such property in the performance of said contract. The number of such purchases which have been made by the complainant since the effective date of said Act has been very considerable and it would unduly lengthen this bill and tax the patience of the Court, and it is wholly unnecessary to enumerate and specifically describe each of the purchases which have been asserted by the defendant to entitle him to collect the tax. All of the properties so purchased and to be purchased by the complainant under its said contract have been or will be used by the United States and this complainant in the performance of the activities of the Atomic Energy Commission and pursuant to the terms of the contract hereinabove mentioned.

On October 15, 1947 the complainant paid the defendant \$1,633.57, which sum was paid to the defendant by reason of the position taken by him as to the applicability of the provisions of the said Tennessee Retailer's Sales Tax Act to the complainant. Of the total amount of said payment, only the sum of \$1,264.98 is specifically the object of re-

covery by the complainant in this case, which amount of \$1,264.98 was the part of said payment claimed by defendant to be payable as the so-called "Use Tax" for the month of September 1947. All of the said purchases by complainant were handled in compliance with the same procedure and under the same arrangement in the case of each item that was purchased. Each of said purchases was consummated through the use of forms, and under the express provisions of and according to the procedure shown by Exhibit "B"² [fol. 10] filed herewith and made a part hereof, which are actual photostated copies of the original records in the possession of the complainant, the pages of which Exhibit B are as follows:

- Page 1. Complainant's purchase requisition No. B-280.
- Page 2. Complainant's purchase order No. 40198.
- Page 3. Reverse side of Page 2 of Exhibit B.
- Page 4. Invoice of Motorola, Inc.
- Page 5. Complainant's receiving report No. 106328, bearing the signature of the complainant's receiving officer and also bearing the approval of a representative of the Atomic Energy Commission.
- Page 6. Complainant's check No. 50890 in payment for the property purchased.
- Page 7. Reverse side of page 6 of Exhibit B.
- Page 8. First page of Voucher No. 40-7528 submitted by complainant to the United States.
- Page 9. Second page of Voucher No. 40-7528.
- Page 10. Third page of Voucher No. 40-7528.
- Page 11. Reverse side of page 8 of Exhibit B.

By check No. 84303 the United States of America reimbursed this complainant for its expenditures made as aforesaid and which appear in the voucher submitted by complainant and appearing hereto as pages 8, 9, 10 of Exhibit B.

Complainant avers that in each and every instance wherein it purchased from vendors without the State of Tennessee, the title thereto became vested in the United States of America at the moment that title passed from the

² Exhibit B to the original bill consists of Roane-Anderson Exhibits 4, 5, 7, 11, 14, 15, 16, and 17, to which please refer.

vendor. Under Article IX, paragraph 1 of the contract [fol. 11] dated February 15, 1944, it is provided as follows:

"Title to all materials, tools, machinery, equipment and supplies which the Contractor purchases in accordance with Article I of this Contract and for which the Contractor shall be entitled to reimbursement under Article V, shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be."

Complainant avers that the uniform and unvarying practice and custom of complainant and the Atomic Energy Commission in the performance of their said contract was that title to all procurements vested in the United States of America at the moment of acquisition from the vendor, and from that moment, in every instance of a purchase, the property was treated as being the property of the United States Government. No insurance for the protection of such purchased property was taken out, in accordance with the policy of the United States Government which dispenses with insurance on Government property. The risk of loss of the property rested at all times upon the United States Government and not upon the complainant.

The complainant is expressly designated and declared by the said contract to be the agent of the United States for the performance of the above contract. Article I, Section 3, thereof, provides as follows:

[fol. 12] "In the operation of the facilities under this contract, and in the procurement of any and all supplies, materials, equipment necessary to the performance of the work hereunder, the Contractor shall act as Agent for the United States of America, it being understood and agreed, however, that all personnel and labor shall be and remain for all purposes the employees of the Contractor, exclusively, it being understood and agreed that the duties and functions of all such persons will be performed under the sole supervision and direc-

tion of the Contractor; provided, however, that employees engaged in the fire, guard and police patrols and forces shall perform their respective duties in accordance with the instructions and under the supervision of the Contracting Officer or his duly authorized representative."

VI

Complainant particularly desires to call to the attention of the Court the provisions of Section 9(b) of the Atomic Energy Act of 1946 reading as follows:

"In order to render financial assistance to those States and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State, County municipality, or any subdivision thereof."

The Complainant alleges that all of its transactions and all of its acts entered into and performed under the contract above mentioned are activities of the Atomic Energy Commission within the intendment and purpose of Section 9(b) [fol. 13] of the Atomic Energy Act of 1946, and that if the Tennessee Retailer's Sales Tax Act is construed as being applicable to the activities or transactions which are herein questioned that Act is invalid as applied because it is repugnant to the Atomic Energy Act of 1946 including Section 9(b) thereof and if construed as applicable to the activities

or transactions as above mentioned is invalid as applied because it is repugnant to the Constitution of the United States.

VII

The said tax paid to the defendant as above averred was paid under protest and duress and if it had not been paid process, either actually issued and in the hands of an officer, or in the defendant Commissioner's hands would have been levied against the complainant's property and sufficient thereof for the payment of said tax would have been seized. Said payment was the only way of averting such action. Said payment was wholly involuntary and was expressly made without prejudice to any and all rights of complainant to the recovery thereof and to establish immunity from and non-liability for such tax. The defendant Commissioner expressly accepted the payment of said tax upon all the conditions attached thereto, as just averred, and has expressly stated and agreed that such payment would leave available to the complainant the full right to sue for the recovery thereof without meeting the defense of voluntary payment, and that such defense would not and could not be asserted.

The premises considered, the complainant prays:

[fol. 14] 1. That process issue and be served upon the defendant and that he be required to answer or otherwise plead to this original bill but not under oath, his oath being expressly waived.

2. That a judgment be entered against the defendant Commissioner which will set forth that the transactions of the complainant, described in the foregoing original bill, and like transactions occurring since those described above, and occurring currently and in the future, are not subject to the tax provided for in the Tennessee Retailer's Sales Tax Act of 1947, and which judgment shall also entitle the complainant to have and recover of the defendant the sum of \$1,264.98 being the amount collected by the defendant from the complainant as a Use Tax under said Act.

3. That upon the completion of the hearing and decision by the Court, a permanent injunction be granted the complainant which shall restrain the defendant and his successors in office from seeking to apply the said Act to the transactions of the complainant of the nature above de-

scribed, and from seeking to recover from the complainant any alleged use taxes provided for in the said Act.

4. For such other and general relief as the complainant may be entitled to.

Roane-Anderson Company, By S. Frank Fowler,
Solicitor. Cates Fowler, Long & Fowler; 1412
Hamilton Bank Building, Knoxville, Tennessee.

[fol. 15] *Duly sworn to by S. Frank Fowler. Jurat omitted in printing.*

[fol. 16]. COST BOND (Omitted in Printing)

[fol. 17] IN THE CHANCERY COURT OF DAVIDSON COUNTY

SUBPOENA TO ANSWER AND RETURN

STATE OF TENNESSEE

To the Sheriff of Davidson County, Greetings:

We command you to summon Sam K. Carson, Commissioner of Finance and Taxation of the State of Tennessee, and Individually, if to be found in your County, to appear in person or by attorney before the Chancellor of Part Two of our Chancery Court at Nashville, on the 1st Monday in December, 1947, it being the 1st day of December, 1947, there and then to answer the Original Bill of Complaint of Roane-Anderson Company, a corporation, vs. Sam K. Carson, Commissioner, etc., and further do and receive what our said Court shall consider in that behalf, and this you shall in nowise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness, Jas. E. Covington, Clerk and Master of our said Chancery Court, at office in the Courthouse at the City of Nashville, Tennessee, this first Monday in October, 1947 and the 172nd year of American Independence.

Jas. E. Covington, Clerk and Master, By Emily Lord,
D. C. & M.

Sheriff's Return:

Came to hand same day issued and Executed by Roy Beeler, Attorney General accepting service for the Defendant.

November 17, 1947.

Garner Robinson, Sheriff, By J. H. Alexander

[fol. 18] Due and legal service of the within process, with copy of the Bill, acknowledged on behalf of the defendant Sam K. Carson, Commissioner of Finance & Taxation of the State of Tennessee, this November 17, 1947.

Roy H. Beeler, Attorney General

[fol. 19] IN THE CHANCERY COURT OF DAVIDSON COUNTY

In Part 2 of the Chancery Court, Davidson County, at Nashville, Tennessee

ROANE-ANDERSON COMPANY, Complainant

VS.

SAM K. CARSON, Commissioner of Finance and Taxation of the State of Tennessee, Defendant

ANSWER OF DEFENDANT—Filed January 28, 1948

Comes the defendant, Sam K. Carson, Commissioner of Finance and Taxation of the State of Tennessee, and for answer to the original bill filed against him in this cause does say:

I

Answering Section I of the original bill, defendant says:

It is admitted, as alleged in the original bill, that complainant is a corporation organized and existing under the laws of the State of Tennessee, with its principal office at Oak Ridge, in Anderson County, Tennessee. It is admitted, as alleged in the original bill, that defendant Sam. K. Carson, is the duly appointed and acting Commissioner Finance and Taxation of the State of Tennessee, and charged with [fol. 20] the collection of the Tennessee Retailer's Sales Tax.

It is denied, as alleged in the original bill, that defendant acted illegally in requiring complainant to pay the tax for which it sues. It is denied, as alleged in the original bill, that complainant is entitled to a declaration to the effect that the Tennessee Re-ailer's Sales Tax does not apply to it in respect to transactions of the character described in the original bill.

To the contrary, defendant's action in requiring complainant to pay the tax for which it sues was legal and valid, and complainant is not entitled to a declaration to the effect that the Tennessee Retailer's Sales Tax does not apply to complainant in respect to transactions of the character described in the original bill.

II

Answering Section II of the original bill, defendant says:

Defendant admits, as alleged in the original bill, that on February 15, 1944, complainant entered into a contract with the United States of America, being contract No. W-7401-ENG-115, as an incident to the prosecution of World War Two, the scope of which contract was important at that time and remains important now in relation to matters of extremely grave concern to the national welfare, security and defense. Defendant supposes that Exhibit "A" is a full and accurate copy of said contract with the additions thereto and modifications thereof which have become effective [fol. 21] from time to time, but not knowing whether this is true neither admits nor denies this allegation but calls for strict proof thereof.

III

Answering Section III of the original bill, defendant says:

Defendant admits that at about the time alleged in the original bill complainant entered upon the performance of a contract with some agency or instrumentality of the United States and has been engaged therein ever since. As stated in the foregoing answer to Section II of the original bill, defendant is not advised as to the contents of said contract, so, does not admit that complainant entered upon the execution of the contract, Exhibit "A", but calls for strict proof thereof.

IV

Answering Section IV of the original bill, defendant says:

Defendant admits the allegations of Section IV of the original bill to the effect that the Atomic Energy Act of 1946, which became a law in the latter part of the year 1946, and which duly provides for the transfer of all properties, duties and rights from the Manhattan Engineer District, a

governmental agency, to the Atomic Energy Commission, was put into execution by executive order of the President of the United States on December 31, 1946. He admits, as alleged in the original bill, that pursuant to and as a result of said executive order the contract between the complainant [fol. 22] and the Atomic Energy Commission, an agency of the United States Government.

V

Answering Section V of the original bill, defendant says:

Defendant admits that complainant has purchased tangible personal property taxable under the Tennessee Retailer's Sales Tax Act in carrying out its contract with the Atomic Energy Commission, and admits that complainant will continue to purchase such property in the performance of such contract. It is denied, however, as alleged in said Section V that the property so purchased and to be purchased by the complainant under its said contract has been or will be used by the United States. To the contrary of this, defendant avers that under the contract, Exhibit "A", said property so purchased and to be purchased is to be used by the complainant.

Defendant avers that complainant, not the Atomic Energy Commission, was the purchaser, importer, storer and user of all the tangible personal property, the sale or use of which was a measure of the taxes involved in this cause.

It is admitted that on October 15, 1947, complainant paid defendant \$1,633.57 by reason of defendant's insistence that the sales tax applied to complainant; that of the total amount paid, \$1,264.98 was claimed by defendant to be payable as use tax owed by the complainant for the month of September, 1947. It is not admitted that this amount of \$1,264.98 constituted all of the use tax liability of complainant [fol. 23] but defendant does say that he did insist that complainant owed at least this amount.

In answer to the allegations in said Section V that the purchases by complainant were handled in compliance with the same procedure and under the same arrangement in the case of each item that was purchased, and that said purchases were consummated through the use of forms according to the procedure shown by Exhibit "B", defendant says that he has no knowledge as to the truth of these

allegations and accordingly neither admits nor denies the same but calls for strict proof thereof.

Defendant, for further answer to the allegations of Section V, denies, as alleged in the original bill, that in each instance wherein complainant purchased tangible personal property from vendors within or without the State of Tennessee the title became vested in the United States of America at the moment title passed from the vendor.

To the contrary of this, defendant would show that according to the terms of Article IX, Paragraph 1 of the contract, Exhibit "A", which is copied in the original bill, the title to said property remains in the complainant and only vests in the Government "at such point or points as the Contracting Officer may designate in writing." (See Article IX, paragraph 1, Exhibit "A".)

For answer to the averment in said Section V that it is the uniform practice and custom of complainant and the Atomic Energy Commission, in the performance of said contract, to treat title to all procurements as vested in the United States of America from the moment of [fol. 24] acquisition from the vendor, the defendant avers that if this practice and custom exists, which is denied, it is contrary to Article IX, Paragraph 1 of Exhibit "A", and unlawful. Any such practice or custom on the part of the employees of the Atomic Energy Commission would be beyond their power and void.

Article IX, paragraph 1 of Exhibit "A" provides that the right of final inspection and acceptance or rejection is reserved to the contracting officer and is to be exercised by the contracting officer by written notice of acceptance or rejection. Defendant avers that any practice or custom engaged in or sought to be established by the employees of the Atomic Energy Commission contrary to their plain duty under these terms of the contract just referred to, would be illegal and void, and could not have the effect of vesting title in the United States prior to its inspection and written acceptance of the tangible personal property.

Answering said Section V further, it is denied that complainant is the agent of the United States of America in the procurement of tangible personal property necessary to its discharge of its part of said contract. It is denied that said contract, Exhibit "A", when read in its entirety and construed in the light of all its provisions has the

effect of constituting complainant an agent of the United States Government.

To the contrary, it appears from the whole of said contract, Exhibit "A", that complainant is an independent [fol. 25] contractor and not an agent.

Defendant avers that the complainant is denominated an agent in said Article I, section 3 of said contract, not for the purpose of endowing it with the rights and powers incident to an agencyship but to bring complainant within the constitutional and statutory exemption from taxation available to the Atomic Energy Commission as an instrumentality or agency of the United States.

Since the relationship of principal and agent is not created by said contract when construed as a whole, complainant is not made the agent of the United States by the bare naming of it as such in said contract.

In this connection, defendant avers that it is beyond the power of the Atomic Energy Commission, itself an agency or instrumentality of the United States of America, to undertake to delegate its agency by constituting complainant an agent for the United States of America. Defendant avers that if said contract, Exhibit "A", is subject to the construction contended for by complainant, in this regard, then same is ultra vires and void.

VI

Answering Section VI of the original bill, defendant says:

It is true that Section 9(b) of the Atomic Energy Act of 1946 exempts the property, activities and income of the Atomic Energy Commission from State, county, or municipal taxation in any form.

[fol. 26]. It is denied, however, that this exemption of the activities of the Atomic Energy Commission, itself an agency or instrumentality of the United States Government, operates to exempt the activities of complainant, a private corporation operating for profit.

In this connection, it is denied that the use taxation of the acquisition of tangible personal property by the complainant under circumstances which would render complainant liable for use taxes is illegal because repugnant to the Constitution of the United States.

To the contrary of these averments, defendant would

respectfully show to the Court that it has long been recognized by the Supreme Court of the United States that the economic burden incident to the payment of use taxes by a contractor with the United States Government must be treated like any other business expense incident to the operations of such a contractor and, to the extent that such taxes increase the cost of the operation, the economic burden thereof may be borne by the United States Government without violating its constitutional tax immunity. This philosophy of governmental exemption from tax liability is exemplified in the cases of *Alabama v. King and Boozer*, 314 U. S. 1, and *Curry v. United States, et al.*, 314 U. S., 14.

However, immediately after the pronouncement by the Supreme Court of the United States of the principle just mentioned, certain administrators of certain departments of the United States Government commenced to undertake [fol. 27] to exonerate those with whom they contracted from liability for taxes by resort to various forms of contract wording. Apparently the practice most commonly resorted to in an effort to circumvent and evade the holdings of the Supreme Court in *Alabama v. King & Boozer* and *Curry v. United States, et al.* is that of entering into a contract, the terms of which denominate the contractor an agent, with the hope that thereby the cloak of constitutional and statutory immunity which attached to the department or commission will be extended to the contractor.

Defendant avers that this accounts for the wording of the contract in Exhibit "A". There is no other reason for the language used in Article I, Section 3. All of the duties and obligations of the respective parties being outlined in the contract in full detail, it was unnecessary to characterize the contractor as an agent unless this be done for the express purpose of throwing the cloak of constitutional and statutory immunity over the contractor contrary to the expressed philosophy that increased cost due to taxation should not be avoided merely because the burden thereof ultimately might fall on the United States Government.

No trickery with words can alter the fact that the complainant is a private corporation composed of intelligent, acquisitive businessmen, who are engaging in a privilege in Tennessee for which all others under similar circum-

stances must pay the privilege tax provided by the Tennessee Retailer's Sales Tax Act. No legal repleader can make a "governmental agency" out of this private corporation for profit!

[fol. 28]

VII

Answering Section VII of the original bill, defendant says:

Defendant admits that complainant paid said tax under protest and is entitled to resort to the remedy provided by Section 1790 et seq. of the Code of Tennessee.

VIII

By way of conclusion to this answer, defendant denies that complainant is entitled to a judgment as prayed for in the original bill. He denies that complainant is entitled to a judgment for any amount.

Defendant denies that complainant is entitled to a permanent injunction of the character prayed for in the original bill or of any other character. He would respectfully show to the court that it is beyond the power of the court to grant an injunction of the *sort* prayed for in this character of suit, this being expressly so provided by Section 1795 of the Code of Tennessee. More than this, he would respectfully point out that there are no averments in the original bill to sustain the prayer for a permanent injunction against him and his successors in office. It is not made to appear in the original bill that there is any reason to believe that the defendant or his successor in office would undertake to collect use taxes from complainant contrary to any final decree which might be made in this suit, declaring the meaning and effect of the contract and the statutes involved.

[fol. 29] Defendant here and now denies each and every allegation of the original bill not hereinbefore specifically admitted and does pray to be dismissed with his just cost.

Roy H. Beeler, Attorney General; Wm. F. Barry, Solicitor General; Harry Phillips, Assistant Attorney General; Allison B. Humphreys, Jr., Advocate General.

[fol. 30] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance and Taxation
and

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-
ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance and Taxation

ORDER CONSOLIDATING CAUSES WITH RESPECT TO PROOF—
June 9, 1949

By consent of the parties and upon their joint application, it is ordered that these causes are consolidated for the purpose of the taking and introduction of evidence, so that a single set of depositions, exhibits and other papers constituting the proof in the causes shall be filed with the Clerk, and the same shall be used in both of the above entitled causes.

J. C. Dale, Jr., Special Chancellor.

O. K. S. Frank Fowler, Solicitor for Complainants. A)
lison B. Humphreys, Jr., Solicitor for Defendant.

[fol. 31] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance and Taxation

ORDER OF REVIVAL—August 31, 1949

Came the parties and suggested to the court that Sam K. Carson no longer occupies the position of Commissioner of Finance & Taxation of the State of Tennessee, and that

said position is now held and occupied by James Clarence Evans. Wherefore, upon motion of the parties and by their mutual consent, it is Ordered first, that this cause be in all respects revived and continued against James Clarence Evans, Commissioner of Finance & Taxation of the State of Tennessee, and second, that in the event this cause is not concluded during the tenure of office of said Evans, the same shall be revived and continued in all respects against the successor or successors in office of the said Evans, without the necessity of any further application by a party or order by the Court.

O. K. S. Frank Fowler, Solicitor for Complainant. Alison B. Humphreys, Jr., Solicitor for Defendant.

[fol. 32] IN THE CHANCERY COURT OF DAVIDSON COUNTY

Rule No. 65015

ROANE-ANDERSON COMPANY

VS.

SAM. K. CARSON, etc.

ARGUMENT AND SUBMISSION

This cause was heard before Alfred T. Adams, Special Chancellor, September 13, 1949 and former days of the term and was taken under advisement on that date.

Alfred T. Adams, Special Chancellor.

[fol. 33] IN THE CHANCERY COURT OF DAVIDSON COUNTY

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

ORDER ALLOWING INTERVENTION—May. 24, 1950

This cause came on to be heard this date upon the petition of the United States for leave to intervene in the above cause, and was argued by counsel.

Upon consideration whereof, the Court doth Order and

Decree that the United States be and it hereby is granted leave to intervene in this cause.

It is further Adjudged, Ordered and Decreed, that the petition for intervention filed herein on behalf of the United States be and the same is filed in this cause as the intervening petition of the United States.

Alfred T. Adams, Special Chancellor.

[fol. 34] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

In the Chancery Court at Nashville

Part II

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE AND
INTERVENING PETITION—Filed May 23, 1950

The United States of America, by its attorneys, J. Howard McGrath, Attorney General of the United States, Theron L. Caudle, Assistant Attorney General of the United States, and Berryman Green as Special Assistant to the Attorney General, respectfully alleges that it has an interest in the matter in litigation, and in the success of the complainant, Roane-Anderson Company, and, therefore, desires to become a party to the litigation by uniting with the complainant in furtherance of its claims, and as grounds therefor alleges:

I

That the intervention for which leave is prayed herein is authorized by the Attorney General of the United States at the request of the Atomic Energy Commission.

II

That the Intervenor adopts and incorporates herein by reference all of the allegations and conclusions contained in the original bill herein.

[fol 35]

III

That by reason of the facts so alleged, your petitioner has an interest in this case which it is entitled to protect by intervention herein.

Wherefore, your petitioner, United States of America, respectfully prays that leave be granted to it to intervene in this action; that an order be entered allowing intervention; and that this Petition for leave to Intervene be considered and adopted by this Court as the Intervening Petition of the United States.

Your petitioner further prays that the judgment prayed for by the complainant in his original bill be entered and that the Court grant such other and further relief as it may deem proper.

A. Howard McGrath, Attorney General; Theron L. Caudle, Assistant Attorney General, by Berryman Green, Attorney for Petitioner, United States of America.

[fol. 36] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65164

WILSON-WEESNER-WILKINSON CO.

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65014

CARBIDE & CARBON CHEMICALS CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65163

DIAMOND COAL MINING COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

OPINION—Filed May 24, 1950

These four cases were brought to test whether or not the Tennessee Retailer's Sales Tax Act applies to purchases and uses of tangible personal property by complainants. They were heard together, since they involved the same legal questions.

[fol. 37] The complainants, Roane-Anderson Company and Carbide and Carbon Chemicals Corporation are cost-plus-fixed-fee contractors which operate Oak Ridge and the Atomic Energy Plant owned by United States of America under contracts with Atomic Energy Commission, which was created pursuant to the Atomic Energy Act of Congress, August 2, 1946 (Public Law 585—79th Congress, 42 U.S.C.A. 1801, et seq.).

The complainant, Wilson-Weesner-Wilkinson Company, is a corporation doing business in the State of Tennessee and engaged in the sale of merchandise, some of which it sold to complainant, Roane-Anderson Company, and on which sale Wilson-Weesner-Wilkinson Company paid a sales tax to the State of Tennessee. The complainant, Diamond Coal Mining Company, is a corporation engaged in business in the State of Tennessee and it sold coal to Carbide and Carbon Chemicals Corporation and paid the State of Tennessee a sales tax on said sale. The purchases so made were used by the respective complainant purchasers in performance of their contracts with Atomic Energy Commission. The property so purchased is of the kind described as being taxable under the Tennessee Retailer's Sales Tax Act of 1947 and similar purchases will be made in the future and used in the performance of said contracts.

Roane-Anderson Company and Carbide and Carbon Chemicals Corporation purchased certain equipment in interstate commerce which was delivered to them at Oak Ridge and used by each in the performance of their respective contracts with the Atomic Energy Commission and they paid the State of Tennessee use/taxes on said purchases. The property so purchased is also of the kind [fol. 38] described as being taxable by the Tennessee Act above referred to.

The payments of these taxes were made under protest and these suits were brought against the Commissioner of Finance and Taxation of the State of Tennessee, as authorized by law, to recover said taxes and a permanent injunction is sought to restrain the defendant and his successors in office from seeking to apply said Act to the transactions of the complainants as set forth and described in the respective bills.

Upon the hearing of these cases, the United States of

America tendered its petitions asking leave to intervene in each case which by the Court is granted.

It is insisted by the complainants that the purchases of tangible personal property made by the complainants, Roane-Anderson Company, and Carbide and Carbon Chemicals Corporation, were in fact made by each of them for and on behalf of the United States of America as represented by the Atomic Energy Commission and that the application of said taxing statute is unlawful because it constitutes a tax by the State Government upon the Federal Government, which is not permitted. "The power to tax is the power to destroy."

The original contracts were executed on behalf of the United States of America by Manhattan Engineer District of the United States Army Corps of Engineers. These contracts together with amendments thereto are cost-plus-fixed-fee contracts similar in essential portions to the type of [fol. 39] contract used by the United States Government in the prosecution of World War II.

The Atomic Energy Act of 1946 provides for the transfer of all properties, responsibilities, duties, rights, etc., from the Manhattan Engineer District of the United States Army Corps of Engineers, to the Atomic Energy Commission and pursuant to and in accordance with said Act, the President of the United States issued Executive Order No. 9816 effective December 31, 1946, which brought about the transfer provided for in said Act so that the Atomic Energy Commission became the governmental agency representing the United States of America in the work being performed under the contracts with Roane-Anderson and Carbide & Carbon.

The substitution of one governmental agency for another did not change the relationship of the contracting parties. The two contracts remained cost-plus-fixed-fee contracts and the contractors are still independent contractors.

When Congress created the Atomic Energy Commission, it knew the contracts of Roane-Anderson and Carbide & Carbon were in existence and that the Atomic Energy plant at Oak Ridge, Tennessee was being constructed and operated by these independent contractors under the provisions of said contracts.

The Atomic Energy Act authorized the Commission to perform the work and functions assigned to it by the Act or

to have it done by others. The Commission elected to continue the operations at Oak Ridge under the contracts [fol. 40] entered into with Roane-Anderson and Carbide & Carbon by the United States Corps of Engineers rather than undertake the performance of the work with its own employees. An explanation for this decision may be found in the Commission's report to the Congress.

The contracts provide that the Government can furnish materials and supplies and pay for them or the contractors can make purchases and the Government will reimburse the contractors. In the transactions involved herein, the contractors made the purchases. Uniformly, the contracts entered into by the contractors for the purchase of materials provided that they are "assignable to the United States Government."

The proof indicates that the details of making purchases and transferring personal property to the Government has not always been carried out as provided in the contracts. Nevertheless, the relationship and rights of the parties are determined by the provisions of the contracts and not by the unauthorized acts of their employees.

All purchases involved herein were made by the respective contractors and paid for by them from the bank accounts maintained by them as required by these contracts. It is true the money was furnished by the United States Government, but this was done pursuant to the provisions of the contracts.

The contracts provide that Roane-Anderson and Carbide & Carbon shall not pledge the credit of the United States of America.

Very able briefs have been filed by counsel representing [fol. 41] the parties hereto in which a number of questions are discussed, not dealt with in this opinion. However, the Court is of the opinion that the matters discussed herein are determinative of the issues involved and, therefore, discussion of other questions is deemed unnecessary.

The Tennessee Retailer's Sales Tax Act levies a tax on the vendor of personal property for the exercise of the privilege of engaging in the business of making sales in Tennessee and is not a tax upon the sales transaction nor is it a tax on the vendee.

This decision by the Supreme Court of Tennessee is conclusive and binding.

Erie Railroad Co. vs. Tompkins, 304 U. S. 69.

Roane-Anderson and Carbide & Carbon are independent contractors engaged in business for profit under cost-plus-fixed-fee contracts with the Atomic Energy Commission and unless a change has been brought about by the enactment of the Atomic Energy Act, complainants are not entitled to the relief sought in these proceedings. The "fee" paid these contractors is not divulged.

Alabama v. King & Boozer, 314 U. S. 1;

Curry v. United States, 314 U. S. 14.

"For the reasons stated at length in our opinion in the King & Boozer case, we think that the contractors, in purchasing and bringing the building material into the state and in appropriating it to their contract with the Government, were not agents or relieved of the tax, to which they would otherwise be subject, by reason of the fact that they are Government contractors. If the state law lays the tax upon them rather than the individual with whom they enter into a cost-plus-contract like the present one, then it affects the Government, like the individual, only as the economic burden is shifted to it through operation of the contract. As pointed out in the opinion in the King & Boozer case, by concession of the Government and on authority, the Constitution, without implementation by congressional legislation, does not prohibit a tax upon Government contractors because its burden is passed on economically by the terms of the contract or otherwise as a part of the construction cost to the Government."

Curry v. United States, *supra*.

"The Government, to support its thesis that it was the purchaser, insists that title to the lumber passed to the Government on shipment by the seller, and points to the very extensive control by the Government over all purchasers made by the Contractors. It emphasizes the fact that the contract reserves to Government officers the decision of whether to buy and what to buy; that purchases of materials of \$500 or over could be

made by the contractors only when approved in advance by the contracting officer; that the Government is reserved the right to approve the price, to furnish the materials itself, if it so elected; that that in the case of the lumber presently involved, the Government inspected and approved the lumber before shipment. From these circumstances it concludes that the Government was the purchaser. The necessary corollary of its position is that the Government, if a purchaser within the taxing statute, became obligated to pay the purchase price.

“But however extensively the Government may have reserved the right to restrict or control the action of the contractors in other respects, neither the reservation nor the exercise of that power gave to the contractors the status of agents of the Government to enter into contracts or to pledge its credit. See *United States v. Algoma Lumber Co.*, 305 U. S. 415, 421, 83 L. Ed. 260, 263, 59 S. Ct. 267; *United States v. Driscoll*, 96 U. S. 421, 24 L. Ed. 847. It can hardly be said that the contractors were not free to obligate themselves for the purchase of materials ordered. The contract contemplated that they should do so and that the Government should reimburse them for their expenditures. It is equally plain that they did not assume to bind the Government to pay for the lumber by their order, approved by the Contracting Officer, which stipulated that it did not bind or purport to bind the Government. The circumstance that the title to the lumber passed to the Government [fol. 43] ment on delivery does not obligate it to the contractor's vendor under a cost-plus contract more than under a lump sum contract. Cf. *James v. Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, 58 S. Ct. 208, 114 A.L.R. 318 *supra*; *United States v. Driscoll*, *supra*.

“We cannot say that the contractors were not, or that the Government was, bound to pay the purchase price, or that the contractors were not the purchasers on whom the statute lays the tax. The added circumstance that they were bound by their contract to furnish the purchased material to the Government, and entitled to be reimbursed by it for the cost, including the tax, no more results in an infringement of the Gov-

ernment immunity than did the tax laid upon the contractor's gross receipts from the Government in *James v. Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, 58 S. Ct. 208, 114 A.L.R. 318, *supra*."

Alabama v. King & Boozer, supra.

It is insisted by the complainants and the United States of America that Section 9(b) of the Atomic Energy Act expressly exempts transactions such as those reflected by the record herein from taxation. The language of the Act relied upon is as follows:

"In order to render financial assistance to those States and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State, County, municipality, or any subdivision thereof."

[fol. 44] A careful study of the language contained in this Section reveals that the Commission is directed to take into consideration the burdens *its activities and the activities of its agents* might cause upon the state and local governments when considering the amount of tax to be paid to those authorities in lieu of property taxes but in the last sentence quoted above, which grants exemption from taxation, it is only *the Commission, its property, its activities, and its income which are "expressly exempt from taxation in any*

manner or form by any State, County, municipality, or any subdivision thereof.' It results that the failure of the Congress to use the word "agents" in the last sentence wherein the Commission was exempt from taxation indicates clearly that the Congress did not intend that the Commission's agents or those with whom it dealt should also be exempt from taxation.

The Congress has upon numerous occasions expressly refused to exempt contractors engaged in work for the Government under cost-plus-fixed-fee contracts from the burdens of taxing statutes. This point was commented upon in *Alabama v. King & Boozer*, *supra*, and also in *Standard Oil Co. v. Fontenot*, 4 So. (2) 637.

It is well established that a fixed policy of the Government will not be changed by presumption. The intention to bring about a change of an established policy must be expressed in apt words and not left to conjecture.

Expressing the same thought the Supreme Court, in *Robertson v. Railroad Labor Board*, 268 U. S. 618, said:

[fol. 45] "It is not lightly to be assumed that Congress intended to depart from a long established policy."

It will, therefore, not be presumed that the Congress intended to grant exemptions from taxation to private corporations organized for profit engaged in performing work under cost-plus-fixed-fee contracts with Atomic Energy Commission.

No authority is cited which empowers a governmental agency to convert a corporation engaged in business in its own behalf for profit into an "instrumentality of Government" and thereby extend to it exemptions from taxation. This would be vesting the governmental agency with legislative powers and could work a destruction of the Government.

Consequently, the Court will not presume that it was the intention of the Congress to vest the Commission with the power to select those who should enjoy immunities of taxation by using the word "activities" in Section 9(b) of the Atomic Energy Act.

The bills in these four cases and the intervening petitions will be dismissed, decrees accordingly.

Alfred T. Adams, Special Chancellor.

[fol. 46] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65164

WILSON-WEESNER-WILKINSON Co.

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65014

CARBIDE & CARBON CHEMICALS CORP.

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

No. 65163

DIAMOND COAL MINING COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

ADDENDUM TO OPINION—Filed May 25, 1950

Since the opinion was filed in the above cases it has come to the Court's attention that an erroneous statement of fact is contained therein, to wit:

"The contracts provide that Roane-Anderson and Carbide & Carbon shall not pledge the credit of the United States of America."

This statement is applicable to the Carbide & Carbon con-[fol. 47] tract but the Roane-Anderson contract does not contain this provision.

The Court is of the opinion that this is not determinative of the issues involved and therefore no change than is above stated is made in the opinion as filed.

Alfred T. Adams, Special Chancellor.

[fol. 48] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

and

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

COMPLAINANTS' REQUEST FOR FINDINGS OF FACT—Filed July 21, 1950

Come the complainants, Roane-Anderson Company and Wilson-Weesner-Wilkinson Company, in the above cases, which have been consolidated for the purpose of trial, and pray that the Court make specific findings of fact as follows, to wit:

1. The Complainant Roane-Anderson Company is a cost-plus-fixed-fee contractor of the United States Atomic Energy Commission operating under Contract W-7401-[fol. 49] ENG-113 at Oak Ridge, Tennessee. The Complainant Wilson-Weesner-Wilkinson Company is a commercial firm which sold items of personal property to the Complainant Roane-Anderson Company for use by the lat-

ter in the performance of its contract with the Atomic Energy Commission.

2. The facts of these cases are developed from the allegations of the complainants which the answers thereto admit or fail to deny, and from the depositions taken on December 13 through 15, 1948 and on April 4, 1949, and stipulations agreed to by the parties.

3. The Complainant Roane-Anderson Company, a subsidiary of the Turner Construction Company organized specifically for this purpose, on February 14, 1944, entered into a contract with the United States of America, as an incident to the prosecution to World War II then in progress, and designated by the parties thereto as Contract W-7401-ENG-115. That contract, and amendments thereto through July 6, 1948, are Exhibits 1, 2 and 27 herein. The scope of the work contemplated under said contract was important at that time and remains important at this time, in relation to matters of extremely grave concern to the national welfare, security and defense. The Complainant Roane-Anderson promptly entered upon performance of said contract, and has been engaged therein ever since, and is so engaged at the present time.

4. The Act of Congress of August 2, 1946 (Public Law 585—79th Congress, 42 USCA 1801, et seq.), known as the Atomic Energy Act of 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from [fol. 50] the Government's agency which had exercised jurisdiction over and supervision of the operations in the area within Roane and Anderson Counties, Tennessee, formerly known as the Clinton Engineer Works and now referred to as Oak Ridge, in which the Complainant Roane-Anderson then and now maintains its offices and carries on its work under said contract.

5. The Governmental agency through which said work had been carried on until the transfer to the Atomic Energy Commission was known as the Manhattan Engineer District of the United States Army Corps of Engineers. Acting pursuant to and in accordance with the provisions of said Act, the President of the United States duly issued Executive Order No. 9816, dated December 31, 1946, which transferred to and made the aforementioned contracts, contracts between the Atomic Energy Commission, agency of

the United States of America, and the Complainant Roane-Anderson Company as of midnight December 31, 1946.

6. As a necessary and integral part of the work under, and in the course of action required by said contracts, the Complainant Roane-Anderson Company has purchased property of the kind described as being taxable under the Tennessee Retailer's Sales Tax Act of 1947, and will continue to purchase such property in the performance of its contract.

7. The Complainant Roane-Anderson has paid Tennessee sales and use taxes on the purchases of property for use under its contract with the Commission and described as being taxable under said statute. On October 15, 1947, Complainant Roane-Anderson paid to the defendant Sam [fol. 51] K. Carson \$1,264.98, claimed by said Defendant to be payable as the "use tax" on purchase by the Complainant Roane-Anderson outside the State of Tennessee for use under its contract with the Commission for the month of September, 1947. Said tax was paid under protest and involuntarily, and suit to recover same begun within the time provided by law. During November 1947, the Complainant Roane-Anderson purchased in the State of Tennessee from the Complainant Wilson-Weesner-Wilkinson Company certain reinforcing steel, wire mesh, concrete carts and a shovel attachment for a sales price of \$5,593.68. The Complainant Roane-Anderson paid to the Complainant Wilson-Weesner-Wilkinson Company said sales price, together with a sum of \$111.87 representing the amount of "sales tax" claimed to be due thereon by the Defendant, Sam K. Carson, which tax was duly paid by the Complainant Wilson-Weesner-Wilkinson Company to said Defendant under protest and involuntarily on December 19, 1947, and suit for recovery of same begun within the time prescribed by law.

8. All of the procurements of property by the Complainant Roane-Anderson Company asserted to be taxable by the Defendant under said Tennessee sales tax statute were purchased solely for use under its contract with the Commission, and were obtained under, and handled through, the same procedures and arrangements as the purchases by said Complainant described in the testimony and the exhibits attached. The Roane-Anderson Company procedures

and forms are shown by Exhibits 4 through 17, and 18 through 26.

[fol. 52] 9. As the legality of the tax collections here under consideration involve the legal status of the Complainant Roane-Anderson Company under its contract with the United States Government, this contract, and the Complainants' operations will be summarized.

10. By contract W-7401-ENG-115, as amended from time to time, the Roane-Anderson Company contracted to "manage, operate, and/or maintain facilities, utilities, roads, services, properties and appurtenances situated within and/or outside the Clinton Engineer Works in the State of Tennessee, including, but not limited to Government-owned facilities, utilities, roads, services, properties, and appurtenances, as directed or authorized" by the Government. (Exhibit 1, Article 1.) This contract was a cost-plus-a-fixed-fee contract.

11. The Town of Oak Ridge was built for the sole purpose of housing workers necessary for the construction and operation of the Government's plants at Oak Ridge. The Government acquired by purchase or condemnation all of the land, some 59,000 acres, on which the city and the plants were built, although it did not take exclusive jurisdiction thereof. It is stipulated by the parties that all the buildings on the land comprising the area known as the Clinton Engineer Works, including the Town of Oak Ridge, were built for the Government and belong to the Government. (P. 211, following depositions in Carbide case.)

12. The Roane-Anderson Company was engaged by the [fol. 53] Government primarily as the "town management" contractor and does no direct operations in connection with the Atomic Energy Commission plants in Oak Ridge. The Company has operated for the Government the town bus system, cafeterias, dormitories, and the hospital, all of which were Government-owned. The Company presently manages the Government-owned housing facilities in Oak Ridge, maintains the roads and streets, utility systems (electricity, water, sewerage disposal) and obtains concessionaires to operate businesses or commercial enterprises in Oak Ridge using Government-owned facilities and on Government-owned property. Under its contract Roane-Anderson Company provides these services, executes contracts, housing licenses and concessionaire agreements as

agent for the government (Exhibit 1, Article 1, Paragraph 3.) The Roane-Anderson Company owns none of the real or personal property which it operates or manages, or uses in the performance of its contract.

13. The Roane-Anderson Company also performs certain maintenance and repair services on other Government-owned buildings and properties, and carries on its payroll a number of employees designated as "mandatory employees", who perform municipal type services under the direction of employees of the Government; for example, policemen, and firemen. The supplies, materials and equipment needed for such organizations of "mandatory employees" are procured by the Roane-Anderson Company and paid for in the same manner as all other purchases by the Company.

14. All of the Company's activities under its contract are under the direct supervision of a Contracting Officer of [fol. 54] the Government (Exhibit 1, Article XVIII), and the manner and extent of the various services and operations of the Company are subject to the direction and authorization of the Contracting Officer (Exhibit 1, Article 1, Section 1 et seq.) The contract expressly provides that in the operation of the facilities under this contract, and in the procurement of any and all supplies, materials and equipment necessary to the performance of the work thereunder, the Company shall act as agent for the United States of America (Exhibit 1, Article 1, Section 3, and Article VII, Section 3C). The Company has so acted at all times in purchasing the items of personal property asserted by the defendant to be taxable under the Tennessee Sales Tax Law. (Testimony, p. 94)..

15. The Government agreed to pay Roane-Anderson Company its cost of the work plus a fixed fee based on the estimated cost at the time the contract was entered into. By the terms of the contract the Government can increase or decrease the "management, operation, and maintenance services" called for in the contract without there being an adjustment in the fee payable to the Company (Exhibit 1, Article IV).

16. The contract provides subject to the approval of the Government, that the Company shall prescribe the rates and charges to be paid by persons benefiting from or using Government property managed by the Company, that the

Company will collect the revenues arising therefrom, and use such revenues to reduce the cost of the work under the contract (Exhibit 1, Article II, and Article V, Section V). [fol. 55] 17. The contract also authorizes the Company to sell Government-owned property in its possession or transferred to it for disposal, and the proceeds of such sales paid in as the Contracting Officer shall direct. (Exhibit 1, Article 1, Section 2j).

18. Title to property furnished by the Government for use by the Company remains in the Government (Exhibit 1, Article V, Section 2b), and title to all materials purchased by Roane-Anderson, and for which it is entitled to reimbursement, vests in the Government in accordance with the contract (Exhibit 1, Article IX) and the purchase orders issued by the Company (Exhibit 5). The contract requires that all property title to which is vested in the Government, shall be suitably marked to indicate that such items are the property of the Government, and requires the Company to turn over to the Government at the expiration or termination, or upon demand of the Contracting Officer, all such "equipment, machinery, tools and unused materials and supplies to the place designated by the Contracting Officer." (Exhibit 1, Article V, Section 2b). The contract further provides that all legal matters arising in connection with the work shall be referred to the Government; that the Government will provide the necessary office space for the Company, and that it is the intent of the parties that the work is to be performed at the expense of the Government, and the Company shall not be liable for any loss, damage, claim, or expense of any kind arising out of the performance of the contract, unless such expense results from the wilful misconduct of the Company's officer (Exhibit 1, Article XXVIII).

[fol. 56] 10. The salaries and expenses of the Company employees, to be reimbursed, must be approved by the Government (Exhibit 27, Exhibit 1, Article XXX, and Article V, Section 1); certain key personnel for the Company's organization cannot be employed without prior approval of the Government (Exhibit 1, Article V, Section 1e); the Government may require the Company to dismiss employees deemed by the Government to be incompetent, careless, or insubordinate or whose continued employment is deemed to be inimical to the public interest; all labor

disputes or threatened disputes, must be brought to the attention of the Government; and all contracts between the Company and unions representing its employees must be submitted to the Government for approval (Exhibit 1, Article XX).

20. *Method of Reimbursing Cost:* As stated in the testimony (p. 97) as of May 31, 1947, Roane-Anderson had advanced to the Government for the purposes of this contract some \$100,000.00, and Roane-Anderson at that time had on hand some \$200,000.00 of Government money for use in connection with the contract work. The money advanced by Roane-Anderson to the Government was obtained from Company sources, and the Government money on hand represented revenues collected by Roane-Anderson on the Government's account and reimbursements made to Roane-Anderson by the Government. This money was on deposit in the Hamilton National Bank of Knoxville, Tennessee, in the name of Roane-Anderson. From this account the Company paid the salaries of its employees, the cost of materials procured for the work, and all other expenses under the contract. The fee payments by the Government [fol. 57] to Roane-Anderson were not made from this money.

21. Since the Government did not originally advance a sum of money with which to carry on the contract work, it was necessary for the Company to establish a working fund for this purpose. In addition, however, all of the revenues collected by Roane-Anderson for the Government from rentals of Government property, sales of Government property, and for other charges and income from the use of Government facilities were deposited by Roane-Anderson in the Hamilton National Bank, and thereafter used in paying obligations incurred under the contract. As the amount of revenue and income of these sources increased, Roane-Anderson was able to reduce the amount of its own funds necessary to pay for the contract work and since July 1, 1948 the company has had none of its own money employed in its operations under the contract (testimony, p. 97). This result, which was intended by the parties, was brought about by Roane-Anderson paying the contract costs out of the revenues received, and in turn billing the Government for the full amount of the expenditures, which, when reimbursed to Roane-Anderson by the Government,

were deposited to Roane-Anderson's account in the Hamilton National Bank. At the present time Roane-Anderson operates entirely out of revenues it collects for the Government and advances of money by the Government to Roane-Anderson (testimony, pages 97, 143-147).

22. For a description of the reimbursement procedure, reference is made to the exhibits filed with the depositions in this case for the purchase of a radio transmitter-receiver by Roane-Anderson from the Motorola Company.

[fol. 58] 23. *Procurement of Property*: In the conduct of its work for the Commission, Roane-Anderson purchases annually a large volume of personal property, both in Tennessee and outside of the State, for use under its contract. All procurements of such property by Roane-Anderson prior to December 1, 1947, were made on purchase order forms such as shown by Exhibits 6 & 7 as agent for the Government. From and after said December 1, 1947, such purchases have been made as agent for the Government on a purchase order form such as shown by Exhibit 8, and subject to the conditions stated on the reverse thereof. The contract with the Government expressly provides that Roane-Anderson shall act as agent for the Government when procuring such property, and that any purchases over \$2,900 in amount must be forwarded to the Government for approval prior to placing with the vendor.

24. Vendors are directed on the purchase orders to ship the property to the Atomic Energy Commission, Oak Ridge, Tennessee, care of Roane-Anderson Company. When property so purchased is received at the warehouse in Oak Ridge, employees of Roane-Anderson inspect and accept the purchased items. Until October, 1948, the Government also made spot checks of materials being received by Roane-Anderson. On these spot checks the Government inspector would prepare an inspection sheet (Exhibit 13) in addition to the tally-in sheet prepared by Roane-Anderson Company (Exhibit 12). Under the present procedures the Government does not inspect or make spot checks of incoming purchases, although it does review and approve Roane-Anderson's procedures and organization for inspection and ac-
[fol. 59] cepting incoming items. On acceptance of the property by Roane-Anderson an appropriate marking is affixed to the property (if of such a nature that it can be marked) to indicate that it is the property of the Government. The symbol used for this purpose by Roane-Anderson consists of

the letters "USRA". Following receipt of the vendor's invoice (Exhibit 11), and preparation of a receiving, inspection, and acceptance report (Exhibit 14), which is countersigned by a representative of the Government, Roane-Anderson pays the invoice (Exhibit 15) and submits a reimbursement voucher to the Government for the amount of its expenditures (Exhibit 17).

25. All of such property purchased by Roane-Anderson is used by the Company in the operation of the facilities carried on for the Government, or in the repair or alteration of Government-owned property, or by some of the "mandatory employees" on Roane-Anderson's payroll in the performance of municipal type functions.

26. The contract between Roane-Anderson and the Government provides (Exhibit 1, Article IX):

"Title to all materials, tools, machinery, equipment, and supplies which the contractor purchases in accordance with Article I of this contract, and for which the contractor shall be entitled to reimbursement under Article V, shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment, and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further, that upon final inspection the contractor shall be given written notice of acceptance or rejection as the case may be."

[fol. 60] 27. This provision of the contract is standard form language used in many types of Government contracts, and reserves to the Contracting Officer full control over when and where the Government would take title to property being procured for it. This language is primarily intended to cover situations where the Government was procuring property which had to pass through several contractors before delivery to the Government (testimony, pages 34-36). Under this contract, no point was designated by the Contracting Officer as the point at which title would pass (testimony, pages 36-127, 141-A, 159-160). Until the revision of the Roane-Anderson purchase order form (Exhibits 8-J) all orders carried the statement that "this order is for the account of the United States Government and becomes

property of the Government at the time it is shipped." Although this statement was removed from the purchase order form with the approval of the Contracting Officer, the effect thereof was merely to permit passage of title at the f.o.b. point specified in the purchase order.

28. It was and remains the intent of the Government and Roane-Anderson that the title to property purchased by Roane-Anderson vested in the Government at the moment title passed from the vendor, and all property purchased by Roane-Anderson has been so treated (testimony, pages 36-39, 122, 129, 163, 167, 168). No written notices of acceptance by the Government of the materials purchased by Roane-Anderson were prepared and forwarded to Roane-Anderson, other than the inspection reports made on a spot [fol. 61] check basis and the signing, by a representative of the Government, of the inspection and receiving reports prepared by Roane-Anderson (Exhibit 14; testimony, pages 61-62, 165).

S. Frank Fowler, Solicitor for the Complainants,
1412 Hamilton Bank Building, Knoxville, Tennessee.

July 21, 1950.

[fol. 62] IN THE CHANCERY COURT OF DAVIDSON COUNTY
No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

and

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

DEFENDANTS' REQUEST FOR FINDINGS OF FACT—August 9, 1950

Comes the defendant James Clarence Evans, Commissioner of Finance and Taxation of Tennessee, in the above

causes which have been consolidated for trial, and prays that the court make the following findings of fact:

1. That complainant Roane-Anderson Company is a private, profit-type Tennessee corporation, and is a cost-plus-fixed-fee contractor with the United States Atomic Energy Commission operating under contract W-7401-ENG-115 at Oak Ridge, Tennessee. The complainant Wilson-Weesner-Wilkinson Company is a private, profit-type Delaware [fol. 63] corporation, domesticated in Tennessee, and is a commercial firm which sold items of personal property to Roane-Anderson Company for use by the latter in the performance of said contract with the Atomic Energy Commission.

2. The facts of these cases are developed from the allegations of the original bills which the answers thereto admit or fail to deny, the depositions taken and filed in the cause, the exhibits thereto, the stipulations of fact made by the parties, and from the public documents filed in the cause by complainants and the intervenors, and all such facts and matters as the Court is required to take judicial knowledge of.

3. The complainant Roane-Anderson Company entered into a contract with the United States of America on November 23, 1943, as an incident to the prosecution of World War II then in progress. The contract was designated by the parties as contract W-7401-ENG-115. Said contract was entered into pursuant to the War Powers Act, Public Law 354, 77th Congress, which authorized the President of the United States, for the better utilization of resources and industries, to authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, to enter into contracts and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making of contracts generally, whenever the President deemed such action would facilitate the prosecution of the war. Said War Powers Act provided further that such contracts [fol. 64] should be a matter of public record under regulations prescribed by the President. By Presidential Executive Order No. 9001, the President authorized the Army and Navy to enter into contracts necessary for the prosecution of the war, and in said Executive Order authorized the Army and Navy by Title 2, Section 4 of said Executive

Order, to make advance payments to such contractors. The contract, and the amendments thereto through June 30, 1948 are Exhibits 1, 2, and 27 herein. The scope of the work contemplated under said contract was important at that time and remains important at this time in relation to matters of extremely grave concern to the National Welfare and Security Defense. The complainant Roane-Anderson Company promptly entered upon the performance of said contract, and has been engaged therein ever since.

4. The Act of Congress of August 2, 1946 (Public Law 585-79th Congress, 42 USCA 1801, et seq.), known as the Atomic Energy Act of 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from the Government's agency which had exercised jurisdiction over and supervision of the operations in the area within Roane and Anderson Counties, Tennessee, formerly known as the Clinton Engineer Works and now referred to as Oak Ridge, in which the complainant Roane-Anderson Company then and now maintains its offices and carries on its work under said contract.

5. The governmental agency through which said work had been carried on until the transfer to the Atomic Energy Commission was known as the Manhattan Engineer District of the United States Army Corps of Engineers. Acting pursuant to and in accordance with the provisions of said [fo]. 65] Act, the President of the United States duly issued Executive Order No. 9816, dated December 31, 1946, which transferred to and made the aforementioned contract, a contract between the Atomic Energy Commission, an agency of the United States of America, and the complainant Roane-Anderson Company as of midnight December 31, 1946.

6. As a necessary and integral part of the work under, and in the course of action required by said contract, the complainant, Roane-Anderson Company, has purchased property of the kind described as being taxable under the Tennessee Retailer's Sales Tax Act of 1947, and will continue to purchase such property in the performance of its contract.

7. The complainant Roane-Anderson Company has paid Tennessee use taxes on the purchase of property for use under its contract with the Commission and described as being subject to the use tax under statute. It has also

paid as a part of the purchase price of tangible personal property amounts equal to the tax levied against vendors of such property for the privilege of engaging in the business of making sales thereof in Tennessee. On October 15th, 1947, complainant Roane-Anderson Company paid to defendant Sam K. Carson, then Commissioner of Finance and Taxation of Tennessee, \$1,264.98, which sum was claimed by said defendant to be payable as the use tax on purchases by complainant Roane-Anderson Company from out-of-state vendors for use under its contract with the Commission for the month of September, 1947. Said tax was paid under protest and involuntarily and suit to re-[fol. 66] cover same was begun within the time provided by law. During November, 1947, the complainant Wilson-Weesner-Wilkinson Company in the course of business sold to complainant Roane-Anderson Company certain items of personal property for a total sales price of \$5,705.55, which price included the sum of \$111.87, required to be added as a part of the sales price of said items of personal property by the Tennessee Retailer's Sales Tax Act. The sales transaction taking place in Tennessee, when complainant Wilson-Weesner-Wilkinson Company paid the tax provided by the Sales Tax Act on its gross sales in Tennessee, it paid \$111.87 as a tax for the privilege of engaging in the business of making sales of tangible personal property to complainant Roane-Anderson Company. This amount was paid under protest and involuntarily on December 19, 1947 and suit to recover the same was commenced within the time prescribed by law.

8. All of the procurements of property by the complainant Roane-Anderson Company asserted to be taxable by the defendant under said Tennessee Sales Tax statute were purchased solely for use under its contract with the Commission, and were obtained under, and handled through, the same procedures and arrangements as the purchases of said complainant described in the testimony and the exhibits attached. The Roane-Anderson Company procedures and forms are shown by Exhibits 4 through 17, and 18 through 26.

9. The Town of Oak Ridge was built for the sole purpose of housing workers necessary for the construction and operation of the Government's plants at Oak Ridge. The Government acquired by purchase or condemnation all

of the land, some 59,000 acres, on which the city and the plants were built, although it did not take exclusive jurisdiction thereof. It is stipulated by the parties that all the buildings on the land comprising the area known as the Clinton Engineering Works, including the Town of Oak Ridge, were built for the Government and belong to the Government. (p. 211, following depositions in Carbide case.)

10. By contract W-7401-ENG-115, as amended from time to time, the Roane-Anderson Company contracted as follows:

"Article I—Statement of Work

"1. The contractor shall manage, operate and/or maintain facilities, utilities, roads, services, properties and appurtenances situated within and/or outside the Clinton Engineer Works in the State of Tennessee, including, but not limited to, Government-owned facilities, utilities, roads, services, properties and appurtenances, as directed or authorized by the Contracting Officer; provided, however, that the work to be performed hereunder shall not be deemed to include the management, operation or maintenance of any processing plant. Work within the restricted plant area or areas may be performed upon the direction or authorization of the Contracting Officer."

"2. By way of illustration, but not limitation, the Contractor shall perform the following services;

"(a) The management, operation, maintenance and repair of residences, hotels, restaurants, cafeterias, dormitories, hutments, trailers, temporary housing facilities, laundries, all other buildings, structures, facilities, utilities, properties and appurtenances, whether similar or dissimilar in nature, auto pool, roads, ways, streets and sidewalks, drainage ditches, garbage disposal, sewage disposal plant and equipment, railroad tracks and appurtenant equipment, transmission lines and appurtenant equipment, water system, heating plants, plumbing and electrical equipment."

[fol. 68] 11. The Roane-Anderson Company has operated for the Government the town bus system, cafeterias, dormitories, and the hospital, all of which were Government-owned. The Company presently manages the Government-

owned housing facilities in Oak Ridge, maintains the roads and streets, utility systems (electric, city, water, sewage disposal), and obtains concessionaires to operate businesses or commercial enterprises in Oak Ridge using Government-owned facilities and on Government owned property. Under its contract Roane-Anderson Company provides these services, executes contracts, housing licenses and concessionaire agreements as agent for the government (Exhibit 1, Article I, Paragraph 3.)

12. The Roane-Anderson Company also performs certain maintenance and repair services on other Government-owned buildings and properties, and carries on its payroll a number of employees designated as "mandatory employees", who perform municipal type services under the direction of employees of the Government; for example, policemen, and firemen. The supplies, materials and equipment needed for such organizations of "mandatory employees" are procured by the Roane-Anderson Company and paid for in the same manner as all other purchases by the Company. The contract under which these operations are carried on is an independent contractor contract whereby Roane-Anderson Company contracts to do certain work, while the Government provides any money necessary to said work. Said contract has been characterized by Carroll L. Wilson, General Manager, Atomic Energy Commission, in a statement to the Congressional Committee on Atomic Energy on Thursday, February 17, 1949 as [fol. 69] follows:

"The joint committee has requested that a part of this afternoon's hearing be devoted to a discussion of the Commission's contract procedures and practices. The Commission welcomes this opportunity for such a discussion. As you know, we have from time to time, in our reports to the Congress as well as in other published statements, referred to the central rule which contractors occupy in the atomic energy program. We believe that it is important for the public generally and for American business to know and to understand the policies which we are following.

"It will be helpful, I think, to begin by stating in somewhat general terms the Commission's views on the manner in which a major part of its business should be conducted.

"The Atomic Energy Act of 1946 left it to the Commission to determine, in the light of experience and prevailing circumstances in each case, whether its installations should be directly operated by the Commission or whether they should be operated by private contractors or organizations in accordance with the practice which had been initiated by the Manhattan District.

"The Commission has been of the view—and we believe this view is amply supported by our 2 years of [fol. 70] experience since we succeeded to the responsibility of the atomic energy enterprise—that we should develop as fully as possible the method of operating through contractual relations with private organizations. We have recognized that the high relative significance of weapon production and the necessary secrecy of large parts of the atomic energy program involve the danger that only limited scientific, technical, and managerial resource will be available to this most urgent new atomic enterprise. Such handicaps must be minimized and overcome if this country's rapid progress in the field of atomic energy is to be assured. Accordingly, the Commission has looked to the basic policy of contractor operation as a means of developing wide and alert participation in the program by a growing number of private organizations, both academic and industrial.

"By pursuing a basic policy of obtaining contractor-operators the Commission has been able to draw upon the technical and administrative talents of a broad sector of the American economy. Operation of our plants and laboratories through established independent contractors not only gives to the atomic energy program substantial benefits from accumulated experience and established facilities; it also enlists the interest and the support of industry and universities for future private development. It has been our conviction that if atomic energy is to become a generic part [fol. 71] of the American scene it should have its roots deep in the institutions which are so productive a part of American progress in science and technology. The identities of the contractor-operators at the Commission's major facilities are of course well known to

the members of the joint committee. At Oak Ridge the production and the laboratory facilities are operated by the Carbide & Carbon Chemicals Corporation, while the Roane-Anderson Co. is the principal contractor for two operations." (p. 47 of "Los Alamos Retrocession Bill and AEC Contract Policy—Hearings Before the Joint Committee on Atomic Energy, Congress of the United States, Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy, February 17, 21 and 24, 1949.")

13. Article XVIII of the contract covers the effect of the Contracting Officer's Decisions, and is in the following language:

"1. The services rendered and the work done by the Contractor shall be subject to the supervision and approval of the Contracting Officer to whom the Contractor shall report and be responsible."

14. Article I, Section 3, and Article VIII, Section 3 (c) provide as follows:

"3. In the operation of the facilities under this contract, and in the procurement of any and all such supplies, materials and equipment necessary to the performance of the work hereunder, the Contractor shall act as agent for the United States of America, it being understood and agreed, however, that all personnel and labor shall be and remain for all purposes the employees of the Contractor, exclusively, it being understood and agreed that the duties and functions of all such persons will be performed under [fol. 72] the sole supervision and direction of the Contractor, except as otherwise expressly provided in this contract or as otherwise mutually agreed in writing between the Contractor and the Contracting Officer."

Article VIII, Section 3(c):

"(c) Reduce to writing, unless this provision is waived in writing by the Contracting Officer, every contract in excess of Two Thousand Five Hundred Dollars (\$2,500.00) made by it for services, materials,

supplies, tools, machinery and equipment, or for the use thereof in connection with the work under this contract. Make all such contracts in its name as agent for the United States of America. No purchase in excess of Two Thousand Five Hundred Dollars (\$2,500.00) shall be made or placed without the prior approval of the Contracting Officer."

15. These provisions of the contract whereby, first, the United States Army Engineers, and, second, the Atomic Energy Commission, themselves merely agencies of the Federal Government, undertake to constitute Roane-Anderson Company an agent of the United States Government, were placed in the contract for the purpose of avoiding state taxes. On page 6 of Exhibit 36 in the Roane-Anderson Company case, the same being a copy of the negotiations between the United States Army Engineers and Roane-Anderson Company, leading up to the integration of contract No. W-7401-ENG-115, the following statement appears:

"Operation, Supervision and Maintenance, as an agent for the Government.

"(Note) The agency provision will be to the benefit of the Government as it will probably make it possible for the Government to avoid the expense of paying [fol. 73] for certain taxes, permits, licenses and fees that might otherwise be required and secured and paid for; by the contractor as a reimbursable item of cost by the Government." (Emphasis ours.)

The Court finds that Roane-Anderson Company is the agent of the United States Government only in the sense that it is the means or medium through which United States Government secures the execution of certain work which it is not prepared to undertake the execution of for itself. That Roane-Anderson is not an agency or instrumentality of the Federal Government and that it was not the intent of the contracting parties to undertake to bestow upon Roane-Anderson Company any such status. That even if such was the intent of the parties to the contract, it did not have this effect, because the United States Army Engineers, and the Atomic Energy Commission are not authorized by the War Powers Act nor by the Atomic Energy Act to constitute and make governmental agencies

of those private contractors who may contract to do work with such governmental agencies:

16. The Government agreed to pay Roane-Anderson Company its cost of the work plus a fixed fee based on the estimated cost at the time the contract was entered into. By the terms of the contract the Government can increase or decrease the "management, operation, and maintenance services" called for in the contract without there being an adjustment in the fee payable to the Company (Exhibit 1, Article IV).

[fol. 74] 17. The contract provides, subject to the approval of the Government that the Company shall prescribe the rates and charges to be paid by persons benefiting from or using Government property managed by the Company, that the Company will collect the revenues arising therefrom, and use such revenues to reduce the cost of the work under the contract (Exhibit 1, Article II, and Article V, Section V).

18. The contract also authorizes the Company to see Government-owned property in its possession or transferred to it for disposal, and the proceeds of such sales paid in as the Contracting Officer shall direct. (Exhibit 1, Article 1, Section 2 j).

19. Title to property furnished by the Government for use by the Company remains in the Government (Exhibit 1, Article V, Section 2b), and title to all materials purchased by Roane-Anderson, and for which it is entitled to reimbursement, vests in the Government in accordance with the contract (Exhibit 1, Article IX). The contract requires that all property, title to which is vested in the Government, shall be suitably marked to indicate that such items are the property of the Government, and requires the Company to turn over to the Government at the expiration or termination, or upon demand of the Contracting Officer, all such "equipment, machinery, tools, and unused materials and supplies to the place designated by the Contracting Officer." (Exhibit 1, Article V, Section 2(b)). The contract further provides that all legal matters arising in connection with the work shall be referred to [fol. 75] the Government; that the Government will provide the necessary office space for the Company, and that it is the intent of the parties that the work is to be performed at the expense of the Government, and the Company shall not be liable for any loss, damage, claim,

or expense of any kind arising out of the performance of the contract, unless such expense results from the wilful misconduct of the Company's officer (Exhibit 1, Article XXVIII).

20. The salaries and expenses of the Company employees, to be reimbursed, must be approved by the Government (Exhibit 27, Exhibit 1, Article XXX, and Article V, Section 1); certain key personnel for the Company's organization cannot be employed without prior approval of the Government (Exhibit 1, Article V, Section 1 (e)); the Government may require the Company to dismiss employees deemed by the Government to be incompetent, careless, or insubordinate or whose continued employment is deemed to be inimical to the public interest; all labor disputes, or threatened disputes, must be brought to the attention of the Government; and all contracts between the Company and unions representing its employees must be submitted to the Government for approval (Exhibit 1, Article XX). All of the contract provisions summarized in Items 18 and 19 are for the purpose of enabling the Government to control the cost of the contract which it has to pay and are not for the purpose of retaining a right to exercise a control over the manner of the execution of the details of the contract.

[fol. 76] 21. *Cost of the Work.* Provision for payment is made by Article V of the contract. This Article provides in substance that the contractor shall be reimbursed for actual expenditures in the performance of the contract including labor, material, tools, machinery, equipment, supplies, fuel, etc. Provision is also made for reimbursement of all other items of expense authorized by the contract. Under this Article the Government has reserved the right to furnish any materials, equipment, machinery, and tools necessary to the performance of the contract, but the Government has not furnished any of these items except in insignificant amounts. Practically all of these items have been purchased by the contractor. The contractor is required under this article, upon completion of the contract to return the equipment, machinery, tools and unused materials and supplies to the Government at the place designated by the Contracting Officer. Section 5 of Article V provides that all revenue received by the Contractor from rebates, discounts, refunds, etc. shall be applied in reduction of the cost of the work.

22. Article VI—*Payments*. This Article provides that the Government will currently reimburse the contractor for expenditures upon certification of the signed payrolls for labor, the receipt of invoices for materials, the reimbursement to be made weekly, but if conditions warrant, reimbursements may be made at more frequent intervals. Provision is also made for the payment of the fixed fee. The contract does not contain any provision for the making [fol. 77] of advance payments to Roane-Anderson. It is obvious that the customary advance payment contract provision, such as were included in Carbide and Carbon contract, were omitted because it was not expected that the character of the work performed by Roane-Anderson, which consisted primarily of the operation of the Government housing facilities, would call for an outlay of money which would require that the Government make advance payments.

23. *Method of Reimbursing Cost*. As stated in the testimony (p. 97) as of May 31, 1947, Roane-Anderson had advanced to the Government for the purposes of this contract some \$100,000.00, and Roane-Anderson at that time had on hand some \$200,000.00 of Government money for use in connection with the contract work. The money advanced by Roane-Anderson to the Government was obtained from Company sources, and the Government money on hand represented revenues collected by Roane-Anderson on the Government's account and reimbursements made to Roane-Anderson by the Government. This money was on deposit in the Hamilton National Bank of Knoxville, Tennessee, in the name of Roane-Anderson. From this account, the Company paid the salaries of its employees, the cost of materials procured for the work, and all other expenses under the contract. The fee payments by the Government to Roane-Anderson were not made from this money.

24. Since the Government did not originally advance a sum of money with which to carry on the contract work, it [fol. 78] — necessary for the Company to establish a working fund for this purpose. In addition, however, all of the revenues collected by Roane-Anderson for the Government from rentals of Government property, sales of Government property, and for other charges and income from the use of Government facilities were deposited by Roane-Anderson in the Hamilton National Bank, and thereafter used in paying obligations incurred under the contract. As

the amount of revenue and income of these sources increased, Roane-Anderson was able to reduce the amount of its own funds necessary to pay for the contract (testimony, p. 97). This result, which was intended by the parties, was brought about by Roane-Anderson paying the contract costs out of the revenues received, and in turn billing the Government for the full amount of the expenditures which, when reimbursed to Roane-Anderson by the Government, were deposited to Roane-Anderson's account in the Hamilton National Bank. At the present time, Roane-Anderson operates entirely out of revenues it collects for the Government and advances of money by the Government to Roane-Anderson (testimony, pages 97, 143-147).

25. For a description of the reimbursement procedure, reference is made to the exhibits filed with the depositions in this case for the purchase of a radio transmitter-receiver by Roane-Anderson from the Motorola Company.

26. *Procurement of Property:* In the conduct of its work for the Commission, Roane-Anderson purchases annually a large volume of personal property, both in Tennessee and [fol. 79] outside of the State, for use under its contract. All procurements of such property by Roane-Anderson prior to December 1, 1947, were made on purchase order forms such as shown by Exhibits 6 and 7. From and after said December 1, 1947, such purchases have been made on a purchase order form such as shown by Exhibit 8, and subject to the conditions stated on the reverse thereof.

27. Vendors are directed on the purchase orders to ship the property to the Atomic Energy Commission, Oak Ridge, Tennessee, care of Roane-Anderson Company. When property so purchased is received at the warehouse in Oak Ridge, employees of Roane-Anderson inspect and accept the purchased items. Until October, 1948, the Government also made spot checks of materials being received by Roane-Anderson. On these spot checks the Government inspector would prepare an inspection sheet (Exhibit 13) in addition to the tally-in sheet prepared by Roane-Anderson Company (Exhibit 12). Under the present procedures the Government does not inspect or make spot checks of incoming purchases, although it does review and approve Roane-Anderson's procedures and organization for inspection and accepting incoming items. On acceptance of the property

by Roane-Anderson an appropriate marking is affixed to the property (if of such a nature that it can be marked) to indicate that it is property of the Government. The symbol used for this purpose by Roane-Anderson consists of the letters "USRA". Following receipt of the vendor's invoice (Exhibit 11), and preparation of a receiving, inspection, and acceptance report (Exhibit 14), which is countersigned by a representative of the Government, Roane-Anderson pays the invoice (Exhibit 15) and submits a reimbursement voucher to the Government for the amount of its expenditures (Exhibit 17).

28. All of such property purchased by Roane-Anderson is used by the Company in the operation of the facilities carried on for the Government, or in the repair or alteration of Government-owned property, or by some of the "mandatory employees" on Roane-Anderson's payroll in the performance of municipal-type functions.

29. The contract between Roane-Anderson and the Government provides (Exhibit 1, Article IX):

"Title to all materials, tools, machinery, equipment and supplies which the contractor purchases in accordance with Article I of this contract, and for which the contractor shall be entitled to reimbursement under Article V, shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment, and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further, that upon final inspection the contractor shall be given written notice of acceptance or rejection as the case may be."

30. This provision of the contract is standard form contract used in many types of contracts and reserves to the Government full control over when and where it takes title to property procured under the contract. There is testimony in the record to the effect that this language of the contract is intended primarily to cover situations where property is procured which has to pass through the hands [fol. 81] of several contractors before delivery.

31. No point has ever been designated by the Government as the point at which title passes, nor has the Con-

tracting Officer ever given written notice of acceptance or rejection of such materials, tools, machinery, equipment and supplies, as provided for and contemplated by said contract provision.

32. Until the revision of the Roane-Anderson purchase order form (Exhibits 8 and 9), all orders carried this statement:

"This order is for the account of the United States Government and becomes the property of the Government at the time it is shipped."

This statement was removed from the purchase order form on request of representatives of the Atomic Energy Commission.

33. The purchase order form contains, in addition to the other provisions already mentioned, another provision as follows:

"This Order is placed for the benefit of, and is assignable to, the United States Government. In the event of assignment to and acceptance by the United States Government, seller agrees to look solely to the United States Government for payment under this order." (Roane-Anderson Exhibit 8-9)

34. Assignments of the purchase orders have not been made, nor has the property acquired under the orders been so assigned. Such tangible personal property as had not [Vol. 82] been used in the improvement of the Government's real estate or otherwise expended under the contract continues in the possession of Roane-Anderson for use by it under the contract.

35. The Commission, though authorized to do so by Section 9(b) of the Atomic Energy Act, has never made any payments to the State and local governments in lieu of property taxes.

36. The contracts provide that the Government can furnish materials and supplies and pay for them or the contractors can make purchases and the Government will reimburse the contractors. In the transactions involved herein the contractors made the purchases. Uniformly, the contracts entered into by the contractors for the purchase of materials provided that they are "assignable to the United States Government."

37. The proof indicates that the details of making purchases and transferring personal property to the Government has not always been carried out as provided in the contracts. Nevertheless, the relationship and rights of the parties are determined by the provisions of the contracts and not by the unauthorized acts of their employees.

38. All purchases involved herein were made by the respective contractors and paid for by them from bank accounts maintained by them as required by these contracts. It is true the money was furnished by the United States Government, but this was done pursuant to the provisions of the contracts.

[fol. 83] 39. From December, 1942 until October, 1946, all of the materials, supplies and machinery purchased by contractors at Oak Ridge, including Roane-Anderson, were shipped on an ordinary bill of lading which was thereafter converted to a Government bill of lading, in order that land grant freight rates might be made applicable to such shipments. In October, 1946 by Act of Congress, land grant freight rates were abolished. From October, 1946 until May 12, 1948 the practice of converting to Government bills of lading was continued for the purpose of avoiding the 3% Federal transportation tax. After May, 1948 there was no conversion to Government bills of lading except when the shipment was to the United States Government on a Government purchase order, and the contractors at Oak Ridge, including Roane-Anderson, pay the 3% Federal transportation tax on all shipments to them.

40. Provision is made by Article XI, Section 3 of the contract for Roane-Anderson to abide by the eight-hour law, as provided by the United States Code, Title 40, Sections 321, 324, 325, and 326, relating to the hours of labor, as modified by the conditions of Section 303 of Public Act No. 781, 76th Congress, relating to compensation for overtime.

Allison B. Humphreys, Jr., Advocate General,
Solicitor for Defendant.

[fol. 84] IN THE CHANCERY COURT FOR DAVIDSON COUNTY,
TENNESSEE

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

and

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-
ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner

ORDER ADOPTING FINDINGS OF FACT—August 17, 1950

This cause was heard on this 17th day of August, 1950 before Alfred T. Adams, Special Chancellor, upon the entire record and more particularly upon the motion of complainants and defendant for the Court to make findings of fact and the written request for findings of fact filed herein on July 21, 1950, by complainants and the written request for findings of fact filed herein on August 9, 1950 by the defendant, from the consideration of all of which the Court doth [fol. 85] order, adjudge and decree that it adopts as its findings of fact the findings of fact as set forth in the written request filed herein by the defendant on August 9, 1950 and it is further ordered by the Court that said findings of fact be made a part of this decree:

Alfred T. Adams, Special Chancellor.

[fol. 86] IN THE CHANCERY COURT OF DAVIDSON COUNTY

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance and Taxation of
Tennessee

FINAL DECREE—August 29, 1950

Be it ever remembered that this cause came on to be heard on the 29th day of August, 1940 and former days before Alfred T. Adams, Special Chancellor, sitting by election of the Bar of Davidson County, Tennessee, in the place and stead of Honorable William J. Wade, Chancellor, who was unable to attend Court on account of illness, on the original bill and the exhibits thereto, including Contract No. W-7401-ENG-115, dated February 14, 1944, entered into between complainant Roane-Anderson Company and the United States of America, together with all amendments to said contract through the 12th day of September, 1949; the answer of defendant; the depositions of witnesses and exhibits thereto; the intervening petition of the United States of America; and the entire record in said cause and upon consideration of all of which the Court finds, in addition to certain other findings of fact heretofore made, as follows:

That the contract No. W-7401-ENG-115, entered into [fol. 87] between complainant Roane-Anderson Company and the United States of America on February 14, 1944, together with all the amendments thereto, is an independent contractor contract of the cost-plus-a-fixed-fee type and creates the relationship of employer and independent contractor between the United States of America and complainant Roane-Anderson Company. That the character of the relationship was not changed by Executive Order No. 9816 of the President of the United States effective December 31, 1946, whereby the supervision of the discharge of said contract was transferred to the Atomic Energy Commission. That, as an independent contractor with the United States of America, whose contract is under the supervision of the Atomic Energy Commission, complainant is not exempt from the use tax levied by Chapter 3 of the Public Acts of the General Assembly of Tennessee for the year 1947 by reason of implied constitutional immunity

of Federal Agencies nor for any of the reasons claimed in the original bill. That Section 9(b) of the Atomic Energy Act of 1946, as amended, does not exempt complainant from the payment of the use tax levied by Chapter 3 of the Public Acts of the General Assembly of Tennessee for the year 1947. That the allegations of the original bill are fully met and overcome by the defenses raised by the answer and established at the hearing, and the original bill should be dismissed at the cost of the complainant. That the intervening petition of the intervenor, the United States of America, which has been fully considered, should, likewise, [fol. 88] be dismissed, but without cost to the intervenor.

It is accordingly ordered, adjudged and decreed, for the reasons stated in the opinion of the Court filed herein and authenticated by the signature of the Special Chancellor, which is ordered made a part of the record herein, and on the findings of fact made by the Court, that complainant's original bill be, and the same is hereby dismissed at the cost of complainant, for which execution may issue. The intervening petition of the intervenor United States of America is likewise dismissed but without cost.

The copies of the public documents here listed which were delivered to the Court by complainant of which judicial notice was taken, are ordered filed and made a part of the record.

Hearings before the Committee of Military Affairs—House of Representatives—Seventy-Ninth Congress, First Session on H. R. 4280, October 9 and 18, 1945.

Hearings before the Special Committee on Atomic Energy, United States Senate—Seventy-Ninth Congress—Second Session on S. 1717, Part 1 and Part 3.

[fol. 89] Hearings before the Special Committee on Atomic Energy, United States Senate—Seventy-Ninth Congress, First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearings before the Joint Committee on Atomic Energy, Congress of the United States—Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96—80th Congress, 1st Session. Letter from the Chairman and Members of the United States Atomic Energy Commission.

Report No. 1211—79th Congress, 2d Session, Senate.
Atomic Energy Act of 1946.

Report No. 1186, 79th Congress, 1st Session—House of
Representatives—Atomic Energy Act of 1945, and Part 2
of Report No. 1186.

To the action of the Court in dismissing complainant's original bill and taxing it with the cost, and in dismissing the intervening petition of the United States of America, [fol. 90] and to the findings of facts made, and all adverse action taken, both complainant and the intervenor except and pray an appeal to the next term of the Supreme Court of Tennessee sitting at Nashville, which appeal is granted to the intervenor United States of America, without condition, but is granted to the complainant, Roane-Anderson Company only on the condition that within thirty days it execute and file with the Clerk and Master an appeal bond in the amount of \$250.00, conditioned as provided by law. It is ordered that all exhibits on file in this cause, including the public documents listed above, shall be sent up to the Supreme Court in original form in event appeal is perfected.

Enter:

Alfred T. Adams, Special Chancellor.

[fol. 91]

APPEAL BOND—Omitted in Printing

[fol. 92] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65165

WILSON-WEESNER-WILKINSON COMPANY, a Corporation Organized and Existing under the Laws of the State of Delaware, and Roane-Anderson Company, a Corporation Organized and Existing under the Laws of the State of Tennessee, Complainants

VS

SAM K. CARSON, Commissioner of Finance & Taxation of the State of Tennessee With Offices at Nashville, Tennessee and Individually a Citizen and Resident of Davidson County, Tennessee, Defendant

ORIGINAL BILL—Filed January 19, 1948

The complainants Wilson-Weesner-Wilkinson Company and Roane-Anderson Company show to the Court the following facts:

I

The complainant Wilson-Weesner-Wilkinson Company is a corporation duly organized and existing under the laws of the State of Delaware and qualified under the laws of the State of Tennessee to do business within the latter State [fol. 93] and doing business therein with its principal office in Nashville, Tennessee.

The complainant Roane-Anderson Company is a corporation duly organized and existing under the laws of the State of Tennessee with its principal office at Oak Ridge in Anderson County, Tennessee.

The defendant Sam K. Carson is the duly appointed and acting Commissioner of Finance and Taxation of the State of Tennessee and as such was and is charged with the collection of all taxes under the Act of the General Assembly of the State of Tennessee known generally as Tennessee Retailer's Sales Tax Act being Chapter No. 3 of the Public Acts of the year 1947 of the General Assembly of Tennessee; and said defendant promptly entered upon the discharge of his responsibility as collecting officer under said Act and the payments hereinafter described were made to him and received by him in his said capacity.

This is a suit brought to recover certain amounts asserted

by said defendant to be due from the complainants under the said Tennessee statute, which amounts the defendant compelled the complainant Wilson-Weesner-Wilkinson Company to pay, although requirements of payment thereof was illegal, complainants not being liable for said tax. The said statute requires the tax to be paid by the 20th day of each month, and this suit is brought for the further purpose of obtaining the adjudication of this Court that said statute and the tax levied thereby do not apply to the complainants in respect to transactions hereinafter described, so that in [fol. 94] the future it shall not be necessary for the complainants to bring a suit each month in order to protect their rights.

II

On February 15, 1944, the complainant Roane-Anderson Company entered into a contract with the United States of America, being Contract No. W-7401-ENG-115. Said contract was entered into by the United States Government as an incident to the prosecution of World War Two then in progress; the scope of the action contemplated under said contract was important at that time and remains important at this time, in relation to matters of extremely grave concern to the national welfare, security and defense. Complainants file herewith as Exhibit "A"¹ and by such reference the same is made a part hereof, a full and accurate copy of said contract with the additions thereto and modifications thereof which have become effective from time to time.

III

Complainant Roane-Anderson Company promptly entered upon the performance of the said contract, and has ever since been engaged therein and is so engaged at the present time.

IV

The Act of the Congress of the United States known as the "Atomic Energy Act of 1946" (42 U.S.C.A 1801, et seq.); which became a law in the latter part of the year 1946, [fol. 95] duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from the governmental instrumentality which had exercised jurisdiction over and

¹ Please refer to Roane-Anderson Exhibit 1.

supervision of the operation of the area within Roane and Anderson Counties, Tennessee, known as the Clinton Engineer Works. The governmental instrumentality through which said work had been carried on until the transfer to the Atomic Energy Commission was known as Manhattan Engineer District. It is in said area that the complainant Roane-Anderson Company maintains its offices and carries on its work under said contract.

The full transfer of properties, authorities, rights, obligations, etc., of the Manhattan Engineer District to the Commission created under the Atomic Energy Act of 1946 is provided for and directed by said Act of Congress. Acting pursuant to and in full discharge of the provision of said Act relating thereto the President of the United States has duly issued Executive Order No. 9816 dated December 31, 1946 which has brought about the full transfer intended by Congress under the terms of said Act. Pursuant to and as a result of the said executive order of the President the contract dated February 15, 1944, above referred to became a contract between the Atomic Energy Commission, an instrumentality of the United States of America, and the Complainant Roane-Anderson Company and this change occurred as of midnight December 31, 1946.

As a necessary and integral part of the work performed under and course of action required by said contract with [fol. 96] the Atomic Energy Commission, all of which work and action was and is an essential and an integral part of the activities of the Atomic Energy Commission in the interest of national welfare, security, and defense, the complainant Roane-Anderson Company has continuously purchased property of the kind which is described as being taxable under the said Tennessee Retailer's Sales Tax Act of 1947, and will continue to purchase such property in the performance of said contract. The number of such purchases which have been made by the said complainant since the effective date of said Act has been very considerable and it would unduly lengthen this bill and tax the patience of the Court; and it is wholly unnecessary to enumerate and specifically describe each of the purchases which have been asserted by the defendant to entitle him to collect the tax. All of the properties so purchased and to be purchased by the said complainant under its said contract have been or will be used by the United States and the said complainant in

the performance of the activities of the Atomic Energy Commission and pursuant to the terms of the contract hereinabove mentioned.

VI

During the month of November, 1947, the complainant Wilson-Weesner-Wilkinson Company sold to the complainant Roane-Anderson Company certain reinforcing steel, wire mesh, concrete carts and a shovel attachment which were delivered to the latter complainant in the said area known as the Clinton Engineering Works. The total consideration paid for said materials and equipment was \$5,593.68. Said property came within the description of property above set forth which has been, is being and will be acquired and used by the complainant Roane-Anderson Company under its said contract with the Atomic Energy Commission and the averments above made with respect to such property are true with respect to that thus sold and delivered during the month of November 1947. Said averments are likewise true with respect to previous sales Wilson-Weesner-Wilkinson made to the Roane-Anderson Company, and also with respect to future sales of materials and equipment, used or to be used by Roane-Anderson Company in the Clinton Engineer Works area.

Said sale price of \$5,593.68 was paid by complainant Roane-Anderson Company to the Wilson-Weesner-Wilkinson Company, together with the sum of \$111.87, representing the tax claimed to be due thereon by the defendant, which tax was paid by the former to the latter as directed by the Sales Tax Act.

VII

On December 19, 1947 the complainant Wilson-Weesner-Wilkinson Company having collected the amount of said alleged sales tax from the complainant Roane-Anderson Company paid said amount of \$111.87 to defendant which payment was made by reason of the position taken by the defendant as to the applicability of provisions of the said Tennessee Retailer's Sales Tax Act to the said transactions between the complainants. All of said purchases [fol. 98] were handled by the complainants in compliance with the same procedure and under the same arrangement in the case of each item that was purchased. Each of said purchases was consummated through the use of forms and

under the express provisions of and according to the procedure shown by Exhibit "B",² filed herewith and made a part hereof, the pages of which are actual photostated copies of original records in the possession of the complainants as follows:

Page 1. Complainant Roane-Anderson Company's Requisition No. G-7901Y.

Page 2. Complainant Roane-Anderson Company's Purchase Order No. 40721.

Page 3. Second page of said complainant's Purchase Order No. 40721.

Page 4. Complainant Roane-Anderson Company's Purchase Order No. 40721.

Page 5. Invoice of Wilson-Weesner-Wilkinson Company No. L-1643.

Page 6. Receiving, inspection and acceptance report No. 111688 of complainant Roane-Anderson Company bearing the signature of said complainant's receiving officer and also bearing the approval of a representative of the Atomic Energy Commission.

Page 7. Supplement No. 1 to said receiving, inspection and acceptance report No. 111688 bearing signatures as aforesaid.

Page 8. Check No. 54005 issued by Roane-Anderson Company in payment for the property purchased.

Page 9. Reverse side of said check.

Page 10. First page of voucher No. 4015549 submitted by Complainant Roane-Anderson Company to the United States.

Page 11. Second page of voucher No. 4015549.

[fol. 99]. Said Exhibit B does not cover all of the sales transactions between the complainants during November, 1947, but is typical of the handling of all such transactions.

By check No. 110981, the United States of America reimbursed the complainant Roane-Anderson Company for its expenditures made as aforesaid and which appear in the voucher submitted by said complainant and appearing hereto as pages 10 and 11 of Exhibit B.

²Exhibit B to this original bill consists of Roane-Anderson Exhibits 18, 19, 20, 21, 22, 24, 25, and 26, to which please refer.

Complainants aver that in each and every instance wherein Roane-Anderson Company purchased from vendors within the State of Tennessee, as well as vendors without the State of Tennessee, the title thereto became vested in the United States of America at the moment that title passed from the vendor. Under Article IX, paragraph 1 of the contract dated February 15, 1944, it is provided 'as follows:

"Title to all materials, tools, machinery, equipment and supplies which the Contractor purchases in accordance with Article I of this Contract and for which the Contractor shall be entitled to reimbursement under Article V shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection, of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be."

Complainants aver that the uniform and unvarying practice and custom of complainant Roane-Anderson Company and the Atomic Energy Commission in the performance of their said contract was that title to all procurements vested [fol. 100] in the United States of America at the moment of acquisition from the vendor, and from that moment, in every instance of a purchase, the property was treated as being the property of the United States Government. No insurance for the protection of such purchased property was taken out, in accordance with the policy of the United States Government which dispenses with insurance on Government property. The risk of loss of the property rested at all times upon the United States Government and not upon the complainant Roane-Anderson Company.

The complainant Roane-Anderson Company is expressly designated and declared by the said contract to be the agent of the United States for the performance of the above contract. Article I, Section 3 thereof provides as follows:

"In the operation of the facilities under this contract, and in the procurement of any and all supplies,

materials, equipment necessary to the performance of the work hereunder, the Contractor shall act as Agent for the United States of America, it being understood and agreed, however, that all personnel and labor shall be and remain for all purposes the employees of the Contractor, exclusively, it being understood and agreed that the duties and functions of all such persons will be performed under the sole supervision and direction of the Contractor; provided, however, that employees engaged in the fire, guard and police patrols and forces shall perform their respective duties in accordance with the instructions and under the supervision of the Contracting Officer or his duly authorized representative."

VIII

Complainants particularly desire to call to the attention of the Court the provisions of Section 9(b) of the Atomic Energy Act of 1946, reading as follows:

[fol. 101] "In order to render financial assistance to those states and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to state and local taxation, the Commission is authorized to make payments to state and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the state or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the state or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any subdivision thereof."

The complainants allege that all of the transactions of Roane-Anderson Company and all of its acts entered into and performed under the contract above mentioned are activities of the Atomic Energy Commission within the intendment and purpose of Section 9(b) of the Atomic Energy Act of 1946, and that if the Tennessee Retailer's Sales Tax Act is construed as being applicable to the activities or transactions which are herein questioned that Act is invalid as applied because it is repugnant to the Atomic Energy Act of 1946 including Section 9(b) thereof and if construed as applicable to the activities or transactions as above mentioned is invalid as applied because it is repugnant to the Constitution of the United States.

IX.

The said tax paid to the defendant as above averred was paid under protest and duress and if it had not been paid, [fol. 102] process, either actually issued and in the hands of an officer, or in the defendant Commissioner's hands would have been levied against the property of complainants or one of them and sufficient thereof for the payment of said tax would have been seized. Said payment was the only way of averting such action. Said payment was wholly involuntary and was expressly made without prejudice to any and all rights of complainants to the recovery thereof and to establish immunity from and non-liability for such tax. The defendant Commissioner expressly accepted the payment of said tax upon all the conditions attached thereto, as just averred, and has expressly stated and agreed that such payment would leave available to the complainants the full right to sue for the recovery thereof without meeting the defense of voluntary payment, and that such defense would not and could not be asserted.

The Premises Considered, the Complainants Pray:

1. That process issue and be served upon the defendant and that he be required to answer or otherwise plead to this original bill but not under oath, his oath being expressly waived.
2. That a judgment be entered against the defendant Commissioner which will set forth that the transactions of the complainants, described in the foregoing original

bill, and like transactions occurring since those described above, and occurring currently and in the future, are not subject to the tax provided for in the Tennessee Retailer's Sales Tax Act of 1947, and which judgment shall also entitle the complainants to have and recover of the defend- [fol. 103] ant the sum of \$111.87 being the amount collected by the defendant from the complainants as a Sales Tax under said Act.

3. That upon the completion of the hearing and decision by the Court, a permanent injunction be granted the complainants which shall restrain the defendant and his successors in office from seeking to apply the said Act to the transactions of the complainants of the nature above described, and from seeking to recover from the complainants, or either of them, sales taxes provided for in the said Act.

4. For such other and general relief as the complainants may be entitled to.

Wilson-Weesner-Wilkinson Company, Roane-Anderson Company, by S. Frank Fowler, Solicitor.

Cates, Fowler, Long & Fowler, 1412 Hamilton Bank Building, Knoxville, Tennessee.

[fol. 104] *Duly sworn to by S. Frank Fowler. Jurat omitted in printing.*

[fol. 105] IN THE CHANCERY COURT OF DAVIDSON COUNTY
COST BOND OMITTED IN PRINTING

[fol. 106] IN THE CHANCERY COURT OF DAVIDSON COUNTY
SUBPOENA TO ANSWER AND RETURN
State of Tennessee

To the Sheriff of Davidson County, Greeting:

We command you to summon Sam K. Carson, Commissioner of Finance and Taxation of the State of Tennessee, and Individually, if to be found in your county, to appear

in person or by attorney before the Chancellor of Part Two of our Chancery Court at Nashville, on the 1st Monday in February, 1947, it being the 2nd day of February, 1947, there and then to answer the Original Bill of Complaint of Wilson-Weesner-Wilkinson Co. et al., vs. Sam K. Carson, Commissioner, etc., and further do and receive what our said Court shall consider in that behalf; and this you shall in nowise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness, Jas. E. Covington, Clerk and Master of our said Chancery Court, at office in the Cour-house at the City of Nashville, Tennessee, this first Monday in October, 1947, and the 172nd year of American Independence.

Jas. E. Covington, Clerk & Master, by Emily Lord,
D. C. & M.

Sheriff's Return:

Came to hand same day issued and executed by serving subpoena to Sam K. Carson, Com. of Finance and Taxation of State of Tennessee and leaving a copy with same. January 20, 1948.

Garner Robinson, Sheriff, by J. H. Alexander, D. S.

{fol. 107} IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65164

WILSON-WEESNER-WILKINSON COMPANY ET AL., Complainants

vs.

SAM K. CARSON, Commissioner of Finance and Taxation of
Tennessee, Defendant

In Part II of Chancery Court, Davidson County, at
Nashville, Tennessee

ANSWER TO THE ORIGINAL BILL—Filed February 16, 1948

Comes the defendant, Sam K. Carson, Commissioner of
Finance and Taxation of the State of Tennessee, and for

answer to the original bill filed against him in this cause does say:

I

For answer to the allegations of Section I of the original bill, defendant says:

Defendant admits that complainant Wilson-Weesner-Wilkinson Company is a Delaware corporation qualified to do business in Tennessee, with its principal office in Nashville, Tennessee.

Defendant admits that complainant Roane-Anderson Company is a Tennessee corporation, with its principal office at Oak Ridge in Anderson County, Tennessee.

Defendant admits that he is the Commissioner of Finance and Taxation of Tennessee and is charged with the duty of collecting, and is collecting the Tennessee Retailer's Sales [fol. 108] Tax.

Defendant admits that he required complainant Wilson-Weesner-Wilkinson Company to pay sales tax as alleged in the concluding paragraph of Section I of the original bill, but he denies that his action in so doing was illegal or that complainant was not liable for said tax. To the contrary, he avers that his action in requiring the payment of said tax was lawful and that the complainant was liable for said tax. Defendant denies that complainants are entitled to an adjudication, in this suit, of their tax liability in regard to future transactions. Sections 1790 et seq. of the Code of Tennessee expressly limit the relief available to complainants to suits to recover such taxes as may be paid under protest. Defendant expressly relies on said statutes as a bar to complainants' request for an adjudication of future liability.

II

For answer to the allegations of Section II of the original bill, defendant says:

Defendant does not know, so he neither admits nor denies the allegations that on February 15, 1944 the complainant Roane-Anderson Company entered into contract No. W-7401-ENG-115, Exhibit "A", with the United States of America, but demands strict proof of this allegation and all other allegations in Section I with regard to said contract.

He denies that the part of the contract exhibited contains all of the portions of the contract that bear upon the question presented in the original bill. He denies that purchases [fol. 109] made by complainant Roane-Anderson Company are financed initially by funds of the United States of America entrusted to the complainant for that purpose.

III

For answer to the allegations of Section III of the original bills, defendant says:

Defendant does not know, so he neither admits nor denies that the Roane-Anderson Company promptly entered upon the performance of the contract Exhibit "A", and has been engaged therein ever since, but demands strict proof thereof.

IV

For answer to the allegations of Section IV of the original bill, defendant says:

Defendant admits that the Atomic Energy Act of 1946 became a law in the latter part of the year 1946, and that the same provides for the transfer of all properties, etc. from the Manhattan Engineer District to the Atomic Energy Commission. He admits that on December 31, 1946 the President of the United States issued an executive order No. 9816 bringing about the transfer intended by Congress under the terms of said Act. He admits that if there was a contract between the complainant Roane-Anderson Company and the Manhattan Engineer District that the same became a contract between said complainant and the Atomic Energy Commission by reason of said executive order of the President of the United States.

[fol. 110]

V

For answer to the allegations of Section V of the original bills, defendant says:

Defendant admits that complainant Roane-Anderson Company has continuously purchased and will continue to purchase property taxable under the Tennessee Retailer Sales Tax Act. Defendant denies that the property so purchased and to be purchased by the complainant has been or

will be used by the United States. He avers that such property will be used only by complainant Roane-Anderson Company.

VI

For answer to the allegations of Section VI of the original bill, defendant says:

Defendant admits that during the month of November, 1947, complainant Wilson-Weesner-Wilkinson Company sold to complainant Roane-Anderson Company certain reinforcing steel, wire mesh, concrete carts and a shovel attachment, which were delivered to complainant Roane-Anderson Co. at the Clinton Engineer Works. He denies that the total consideration paid for reinforcing steel, wire mesh, concrete carts and a shovel attachment was \$5,593.68. He neither admits nor denies that said tangible personal property was acquired and used by complainant Roane-Anderson Company under its contract with the Atomic Energy Commission but demands strict proof thereof. Defendant supposes that Roane-Anderson Company paid complainant Wilson-Weesner-Wilkinson Company the amount of \$5,593.68, together with the sum of \$111.87, but he denies that [fol. 111] the payment of this latter item of \$111.87 constituted the payment of the sales tax by complainant Roane-Anderson Company. To the contrary, he avers that the item of \$111.87 was a part of the purchase price and not the payment of a tax by complainant Roane-Anderson Company.

VII

For answer to the allegations of Section VII of the original bill, defendant says:

Defendant would show that on December 19, 1947, complainant Wilson-Weesner-Wilkinson Company paid the State of Tennessee the sum of \$111.87 but he denies that the same was paid by Wilson-Weesner-Wilkinson Company for Roane-Anderson Company. To the contrary, he avers that the same was paid by the complainant Wilson-Weesner-Wilkinson Company pursuant to its own liability therefor under the terms of the Tennessee Retailer's Sales Tax Act.

He neither admits nor denies that all of said purchases of tangible personal property were handled by complainants in conformity with the procedure set out in said Section VII but demands strict proof thereof.

He denies that the title to said tangible personal property became vested in the United States of America at the moment the title passed from the vendor. He avers that any practice on the part of the employees of the Atomic Energy Commission contrary to the provisions of Article IX, paragraph 1, of the contract Exhibit "A" would be unlawful. He says that if it is the practice and custom of [fol. 112] such employees of said Commission to undertake to treat the title to procurements by complainant Roane-Anderson Company as bested in the United States of America prior to the final inspection and acceptance or rejection, without written notice of acceptance or rejection as required by said Article IX, paragraph 1, that such practice and custom is void and does not have the effect of vesting title in the United States Government.

Defendant denies that complainant Roane-Anderson Company is the agent of the United States in the performance of the contract Exhibit "A". To the contrary, he avers that said complainant is an independent contractor. He avers that it is beyond the power of the Atomic Energy Commission to constitute said complainant an agent of the United States and that any contractual attempt so to do is ultra vires and void.

VIII

Defendant denies that the transactions of the Roane-Anderson Company performed under the contract Exhibit "A" are "activities" of the Atomic Energy Commission within the intent and purpose of Section 9(b) of the Atomic Energy Act of 1946. He denies that the Tennessee Retailer's Sales Tax Act would be invalid if construed as being applicable to the sale of tangible personal property in Tennessee, and is liable to pay the privilege tax levied against it by the Tennessee Retailer's Sales Tax Act at the rate fixed by said Act. He avers that the tax is levied upon complainant Wilson-Weesner-Wilkinson Co. for the privilege it exercises of selling tangible personal property, and [fol. 113] not upon complainant Roane-Anderson Co.

Defendant avers that the payment of an amount equal to the tax by complainant Roane-Anderson Company upon its purchase of tangible personal property from complainant Wilson-Weesner-Wilkinson Company does not amount to the payment of the tax by complainant Roane-Anderson Company. To the contrary of this, he avers that the amount

equal to the tax which was paid by complainant Roane-Anderson Company to complainant Wilson-Weesner-Wilkinson Company was nothing more nor less than a payment by Roane-Anderson Co. of part of the purchase price.

Defendant would show to the court that Section 5(b) of Chapter 3 of the Public Acts of 1947, the Tennessee Retailer's Sales Tax Act, requires dealers, as far as practicable to add the amount of the tax imposed under the Act to the sales price, and provides that the same "shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts."

He avers that Section 5(b) of the statute was adopted by the Legislature to control unfair competition and to provide for a uniform impact of the tax act upon the retail economy of the State. He avers that this provision was adopted in recognition of the fact that the cost of all taxes paid by a seller, such as complainant Wilson-Weesner-Wilkinson Company, must be added to the sales price in order that the seller may survive. He avers that the mere fact that the [fol. 114] legislature undertook to regulate and control the manner in which the seller should take the tax into consideration in fixing the sales price of an article of tangible personal property cannot and does not amount to taxation of the purchaser.

He avers, since the incidence of the tax is upon complainant Wilson-Weesner-Wilkinson Company and not upon complainant Roane-Anderson Company, and since the cost of the tax falls upon complainant Roane-Anderson Company by virtue of the operation of a statute enacted in recognition of economic law rather than from the operation of the economic law unaided by statute, that the Tennessee Retailer's Sales Tax Act cannot be construed as taxing the activities of the Atomic Energy Commission, even if the buying of tangible personal property by complainant Roane-Anderson Company can be construed as amounting to an "activity" exempted by Section 9(b) of the Atomic Energy Act.

Defendant denies that a construction of the Tennessee Retailer's Sales Tax Act which would render complainant Wilson-Weesner-Wilkinson Company liable for the sales tax upon tangible personal property sold to complainant Roane-Anderson Company would be invalid as contrary to

Section 9(b) of the Atomic Energy Act or as repugnant to the Constitution of the United States.

IX

For answer to the allegations of Section IX of the original bill; defendant says:

[fol. 115] Defendant admits that said tax was paid under protest and that complainants are entitled to seek the recourse provided by Section 1790, et seq. of the Code. He denies, however, that complainants are entitled to an injunction as prayed, since to grant the same would be contrary to the express provisions of Section 1795 of the Code.

Defendant here and now denies every allegation of the original bill not hereinbefore admitted and prays to be dismissed with his just cost.

Roy H. Beeler, Attorney General. William F. Barry,
Solicitor General. Harry Phillips, Assistant Atty.
Gen. Allison B. Humphreys, Jr., Advocate General.

[fol. 116] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65164

WILSON-WEESNER-WILKINSON COMPANY, et al.

vs.

SAM K. CARSON, Commissioner, eto.

ORDER AS TO PROOF—April 7, 1949

This cause came on to be heard on the regular call of the docket, on April 4, 1949, before Special Chancellor Alfred T. Adams, and it appearing to the Court that the complainants have filed no proof, it is, therefore, ordered, adjudged and decreed that the complainants take and file their proof within sixty days from the entry of this decree.

[fol. 117] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation

ORDER OF REVIVAL—August 31, 1949

Came the parties and suggested to the Court that Sam K. Carson no longer occupies the position of Commissioner of Finance & Taxation of the State of Tennessee, and that said position is now held and occupied by James Clarence Evans. Wherefore, upon motion of the parties and by their mutual consent it is Ordered first, that this cause be in all respects revived and continued against James Clarence Evans, Commissioner of Finance & Taxation for the State of Tennessee, and, second, that in the event this cause is not concluded during the tenure of office of said Evans, the same shall be revived and continued in all respects against the successor or successors in office of the said Evans, without the necessity of any further application by a party or order by the Court.

O.K. S. Frank Fowler, Solicitor for Complainant. Allison B. Humphreys, Jr., Solicitor for Defendant.

[fol. 118] IN THE CHANCERY COURT OF DAVIDSON COUNTY

Rule No. 65164

WILSON-WEESNER-WILKINSON Co., et al.,

vs.

SAM K. CARSON, Commissioner, etc.

ORDER OF SUBMISSION—September 23

This cause was heard before Alfred T. Adams, Special Chancellor, September 13, 1949 and former days of the term and was taken under advisement on that date.

Alfred T. Adams, Special Chancellor.

[fol. 119] IN THE CHANCERY COURT OF DAVIDSON COUNTY

WILSON-WEESNER-WILKINSON COMPANY and ROANE-
ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation

ORDER ON INTERVENTION—May 24, 1950

This cause came on to be heard this date upon the petition of the United States for leave to intervene in the above cause, and was argued by counsel.

Upon consideration whereof, the Court doth order and decree that the United States be and it hereby is granted leave to intervene in this cause.

It is further adjudged, ordered and decreed, that the petition for intervention filed herein on behalf of the United States be and the same is filed in this cause as the intervening petition of the United States.

Alfred T. Adams, Special Chancellor.

[fol. 120] IN THE CHANCERY COURT OF DAVIDSON COUNTY

WILSON-WEESNER-WILKINSON COMPANY and ROANE-
ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation

PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE
AND INTERVENING PETITION—Filed May 24, 1950

The United States of America, by its attorneys J. Howard McGrath, Attorney General of the United States, Theron L. Caudle, Assistant Attorney General of the United States, and Berryman Green as Special Assistant to the Attorney General, respectfully alleges that it has an interest in the matter in litigation, and in the success of the complainants, Wilson-Weesner-Wilkinson Company and Roane-Anderson Company, and, therefore, desires to become a party to the litigation by uniting with the com-

plainants in furtherance of their claims, and as grounds therefor alleges:

I

That the intervention for which leave is prayed herein is authorized by the Attorney General of the United States at the request of the Atomic Energy Commission.

[fol. 121]

II

That the Intervenor adopts and incorporates herein by reference all of the allegations and conclusions contained in the original bill herein.

III

That by reason of the facts so alleged your petitioner has an interest in this case which it is entitled to protect by intervention herein.

Wherefore, your petitioner, United States of America respectfully prays that leave be granted to it to intervene in this action; that an order be entered allowing intervention; and that this Petition for Leave to Intervene be considered and adopted by this Court as the Intervening Petition of the United States.

Your petitioner further prays that the judgment prayed for by the complainants in their original bill be entered and that the Court grant such other and further relief as it may deem proper.

J. Howard McGrath, Attorney General; Theron L. Caudle, Asst. Atty. General, by Berryman Green, Attorneys for the Petitioner United States of America.

[fol. 122] IN THE CHANCERY COURT OF DAVIDSON COUNTY

WILSON-WEESNER-WILKINSON COMPANY, et al.

VS.

SAM K. CARSON, Commissioner of Finance and Taxation of
Tennessee

FINAL DECREE—August 29, 1950

Be it ever remembered that this cause came on to be heard on the 29 day of August, 1950, and former days before Alfred T. Adams, Special Chancellor, sitting by election of the Bar of Davidson County, Tennessee, in the place and stead of Honorable William J. Wade, Chancellor, who was unable to attend Court on account of illness, on the original bill and the exhibits thereto, including Contract No. W-7401-ENG-115, dated February 14, 1944, entered into between complainant, Roane-Anderson Company and the United States of America, together with all amendments to said contract through the 12th day of September, 1949; the answer of defendant; the depositions of witnesses and exhibits thereto; the intervening petition of the United States of America; and the entire record in said cause and upon consideration of all of which the Court finds, in addition to certain other findings of fact heretofore made, as follows:

That the Tennessee Retailer's Sales Tax, provided for by Chapter 3 of the Public Acts of the General Assembly of Tennessee for the year 1947, is a non-discriminatory excise tax on the complainant, Wilson-Weesner-Wilkinson Company, [fol. 123] pany, for the privilege of engaging in the business of making retail sales of tangible personal property in Tennessee. That complainant, Wilson-Weesner-Wilkinson Company, exercised this privilege in making sales of tangible personal property to its co-complainant Roane-Anderson Company, and was liable to pay the State of Tennessee the sales tax collected from it for which it sues in this cause. That complainant, Roane-Anderson Company, is an independent contractor with the United States of America under contract No. W-7401-ENG-115, dated February 14, 1944, together with the amendments and additions thereto through September 12, 1949. That this independent contractor relationship was not changed by Executive Order No. 9816 of

the President of the United States of America, effective December 31, 1946 transferring the supervision of said contract to the Atomic Energy Commission. That the complainant, Wilson-Weesner-Wilkinson Company, in exercising the privilege of making sales of tangible personal property in Tennessee to Roane-Anderson Company for use by it in its above referred to contract with the United States of America is not exempt from the sales tax levied by Chapter 3 of the Public Acts of the General Assembly of the State of Tennessee for the year 1947, by the doctrine of implied constitutional immunity of Federal agencies nor by reason of the exemptions contained in Section 9(b) of the Atomic Energy Act of 1946 nor for any other reasons claimed in the original bill of the complainants and the complainant, Roane-Anderson Company, is not authorized to purchase [fol. 124] tangible personal property from the complainant, Wilson-Weesner-Wilkinson Company, for use by it in its above referred to contract with the United States of America without the payment of the equivalent of the sales tax required to be added to the purchase price of said tangible personal property by said Chapter 3. That the allegations of the original bill are fully met and overcome by the defenses raised by the answer and established at the hearing, and said bill should be dismissed at the cost of the complainants. That the intervening petition of the intervenor, the United States of America, which has been fully considered, should, likewise, be dismissed, but without cost to the intervenor.

It is accordingly ordered, adjudged and decreed, for the reasons stated in the opinion of the Court filed herein and authenticated by the signature of the Special Chancellor, which is ordered made a part of the record herein, and on the findings of fact made by the Court, that complainants' original bill be and the same is hereby dismissed at the cost of complainants for which execution may issue. The intervening petition of the intervenor, United States of America, is likewise dismissed but without cost.

The copies of the public documents here listed which were delivered to the Court by complainant of which judicial notice was taken, are ordered filed and made a part of the record:

Hearings before the Committee on Military Affairs—
House of Representatives—Seventy-Ninth Congress,
First Session on H. R. 4280, October 9 and 18, 1945.

[fol. 125] Hearings before the Special Committee on Atomic Energy, United States Senate—Seventy-Ninth Congress—Session on S. 1717, Part 1 and Part 3.

Hearings before the Special Committee on Atomic Energy, United States Senate—Seventy-Ninth Congress, First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearings before the Joint Committee on Atomic Energy, Congress of the United States—Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96—80th Congress, 1st Session—Letter from the Chairman and Members of the United States Atomic Energy Commission.

Report No. 1211—79th Congress, 2d Session, Senate Atomic Energy Act of 1946.

Report No. 1186—79th Congress, 1st Session—House of Representatives—Atomic Energy Act of 1945, and Part 2 of Report No. 1186.

To the action of the Court in dismissing complainants' original bill and taxing them with the cost, and in dismissing the intervening petition of the United States of America, and to the findings of fact made, and all adverse action taken, both complainants and the intervenor except and pray an appeal to the next term of the Supreme Court of Tennessee sitting at Nashville, which appeal is granted to the intervenor United States of America, without condition, but is granted to the complainants Roane-Anderson Company and Wilson-Weesner-Wilkinson Company only on the condition that within thirty days they execute and file with the Clerk and Master an appeal bond in the amount of \$250.00 conditioned as provided by law. It is ordered that all exhibits on file in this case, including the public documents listed above, shall be sent up to the Supreme Court in original form in event appeal is perfected.

Enter:

Alfred T. Adams, Special Chancellor.

[fol. 126] IN THE CHANCERY COURT FOR DAVIDSON COUNTY

APPEAL BOND—Omitted in Printing

[fol. 127] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

and

No. 65164

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation.

STIPULATION AS TO EVIDENCE—Filed June 10, 1949

In this cause for the purpose of simplifying the introduction of proof and expediting the cause it is stipulated that the complainants may introduce in evidence, without objection, the following portions of the document published by the United States Government popularly known as "the Smyth report", which is formally entitled, "A General Account of the Development of Methods of Using Atomic Energy for Military Purposes under the Auspices of the United States Government 1940-1945," by H. D. Smyth, publication authorized as of August 1945:

Pages 20 and 21, paragraphs 1.60, 2.1 and 2.2.

Page 27, paragraph 2.27.

Page 29, paragraph 2.34.

[fols. 128-128a] Page 30, paragraphs 2.36 and 2.37.

Page 59, paragraphs 5.23 and 5.24.

Pages 61-62, paragraphs 5.32-5.34, inclusive.

Pages 79-81, paragraphs 7.4-7.13, inclusive.

Pages 102 to 104; inclusive, paragraphs 8.34 to 8.48, inclusive.

Page 110, paragraph 8.70.

Page 125, paragraphs 10.1 and 10.2.

Pages 127 to 135, inclusive, paragraphs 10.9-10.42, inclusive.

Chapter XI, Pages 136-149, inclusive, paragraphs 11.1-11.48, inclusive.

It is further stipulated that the complainants may introduce in evidence, without objection, pages 1 to 22 (middle of page) of report published by the United States Atomic Energy Commission and published by the United States Government printing office entitled, "Atomic Energy Development 1947-1948."

This 7th day of June, 1949.

S. Frank Fowler, Solicitor for Complainants; Allison
B. Humphreys, Jr., Solicitor for Defendant.

[fol. 129] IN THE CHANCERY COURT AT NASHVILLE,
TENNESSEE

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation

and

No. 65164

WILSON-WEESNER-WILKINSON Co., and ROANE-ANDERSON
COMPANY

vs.

SAM K. CARSON, Commissioner of Finance & Taxation

Bill of Exceptions

The depositions of Charles Vanden Bulck, George Horr, Ralph Callahan, Walter H. Leedom, Noble J. Holland, Dwight H. Smith, J. P. Fulghum, taken by consent of

parties on behalf of the complainants in the above named causes, and the United States of America, which has declared its intention to intervene in these proceedings, said depositions being taken at the Administration Building in Oak Ridge, Tennessee on December 13, 1948 at 10:15 a. m., [fol. 130] in the presence of Ralph Callahan, representing Roane-Anderson Company; S. F. Fowler, Solicitor of record for the complainants; Allison B. Humphreys, Solicitor of record for the defendant; Berryman Green, of the Department of Justice of the United States of America; Harold L. Price, Assistant General Counsel, Atomic Energy Commission; and O. S. Hiestand, Attorney for the Atomic Energy Commission.

All formalities as to caption, certificate and transmission are waived and it is agreed that said depositions, after the witnesses have been duly sworn, may be taken in shorthand by A. C. Dore, Court Reporter and that he may thereafter transcribe the same, sign the names of the witnesses hereto and may also sign the name of the notary public whose signature and seal are expressly waived.

It is further agreed by the parties, acting through their counsel of record, that a single set of these depositions shall be filed in both of the above-captioned causes; that these two causes shall be consolidated so far as the introduction of evidence and trial are concerned and that the Court may enter an appropriate order so providing.

For the information of the Court, counsel for the parties jointly state that the issues presented by these causes have been the subject of conferences and negotiations between the State of Tennessee, the Atomic Energy Commission and [fol. 131] the Department of Justice of the United States.

It was agreed that the amount of the Sales and Use Taxes would be paid monthly, as provided in the Sales Tax Act, and test litigation instituted to determine whether the Sales and Use Taxes are applicable in the transactions involved in these cases and similar transactions. The outcome of such litigation also is to determine whether the taxes paid to the State shall be refunded.

It is not the intention by this statement to vary or modify the agreement, but to indicate its existence and general nature.

The declaration by the United States Government of its intention to intervene, and the taking of these depositions

by agreement does not waive the right of the State of Tennessee and the Commissioner of Finance & Taxation of the State of Tennessee to object to the intervention of the United States Government or its effort to intervene.

Mr. Humphreys: I may rely, in the course of the trial on the best evidence rule and the hearsay rule, which was not included.

Mr. Green: Do you run that to these depositions of the contractor?

Mr. Humphreys: No, I don't apply it to anything of that character that I know about but what I don't know and [fol. 132] what somebody says he has heard I am not going to agree to.

(The rule as to the exclusion of witnesses was called for and Mr. Callahan stayed in the room as representative of Roane-Anderson Company.)

The first witness, CHARLES VANDEN BULCK, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age and occupation.

A. Charles Vanden Bulck, 44, special assistant to the Manager of Oak Ridge Operations.

Q. You live in Oak Ridge?

A. I do.

Q. How long have you held the position with the Atomic Energy Commission that you have mentioned?

A. In the capacity of special Assistant to the Manager since June of this year. I have been employed by the Atomic Energy Commission since they took over the Manhattan Project on January 1st, 1947. At that time, I was head of the Administrative Division which comprises practically the same duties I have today except that I had operating responsibilities.

[fol. 133] Q. Your duties then were broader than they are now?

A. Only in the fact that I had specific responsibility for operations, of Operation Offices Division whereas now I serve entirely in the capacity of a staff assistant.

Q. Describe briefly the kind of work that you are engaged in from day to day.

A. Currently or back in January?

Q. Let's start with the current situation.

A. Well, today I am the Chief Co-ordinator with regard to the negotiations with contractors with the Oak Ridge Operation as to entering into that for its operations. When I say "all" contractors I refer to those that are not let as a result of competitive bidding.

Q. What other duties?

A. In addition to that I serve on a number of Boards and Committees for the Manager, some of them having to do with the incorporation of the town, land used in the town. I serve currently on the Board in connection with investigation of personnel under the Loyalty Provisions of the Atomic Energy Act. I handle special investigations for the Manager as administrative assistant.

Q. Now, Mr. Vanden Bulek, I think that gives us enough of an idea about your present job. Did you discharge those same functions for the Atomic Energy Commission beginning January 1, 1947?

[fol. 134] A. No, on January 1, 1947 I was the Chief of the Administrative Division which involved broad supervision over the Fiscal Branch, the Contract and Legal Branch, the Property Accountability Branch, and the Government Civilian Personnel Unit. That's about all.

Q. Before January 1, 1947 by whom were you employed and what were your duties?

A. From September, 1946 when I got out of the Army, I resumed the same position I had while I was in the service in a civilian capacity, which involved the same duties I have just listed as of January 1.

Q. Were you a civilian employee of the Army from September 1, 1946 until January 1, 1947?

A. That September 1st date I am not too sure about but it was in September when I took—it may be August of that year—somewhere in there that I took up my actual duties in a civilian capacity. I got into the Army in October, 1942. At that time I was furloughed from my civilian job with the Manhattan Project. I served for a period of about four years in the Army with the Manhattan Project.

Q. You say you got out of the Army in 1942?

A. No, 1946.

Q. You say you went into the Army in 1942?

A. That's right.

Q. Where were you employed before 1942?

[fol. 135] A. I have been employed by the Corps of Engineers since December, 1923.

Q. In a civilian capacity as of that date?

A. In a civilian capacity as of that date until the time I was furloughed and got into the Army.

Q. What was the Manhattan District, Mr. Vanden Bulek?

A. The Manhattan District was a special division organized nominally under the Chief of Engineers of the Army to carry on the construction work and the research incident to the completion of the project which was the production of the atomic bomb.

Q. In the course of your employment by the Corps of Engineers were you brought into contract with this project for the development of fissionable material?

A. Yes, in June, 1942 I was employed by the Syracuse District, at Syracuse, New York, and as a result of a special meeting called by the District Engineer, Colonel James C. Marshall, we met in his office one Sunday in June, 1942 and he advised us that a special project had been assigned to the Syracuse District the extent of which he was unable to reveal to us at the time, but it was important enough for him to hand-pick his organization and start up working as a separate unit, separate and distinct from what was under the control of the Syracuse District, and we operated in that capacity until August 15, 1942, I believe it was when the official order was issued by the War Department establishing the Manhattan District.

Q. Was there a separate appropriation for the Manhattan District?

A. No, the initial appropriation was disguised and came from what was then surplus funds or extra funds available to the Corps of Engineers, and we retained that Engineers' appropriation until June, 1946 with the War Department appropriation labeled "Atomic Services" as part of the War Department, it became a part of the appropriation Bill.

Q. Do I understand that the funds which enabled the Manhattan District to operate were concealed so to speak in funds of the Army, the Army Appropriation?

A. That's correct. The Corps of Engineers had avail-

able to it funds which were labeled "Engineer Services, Army", which were the funds which we first started out with. Subsequently, they also received an appropriation labeled "Expediting Service and Supply" and it was between those two types of funds that we drew all of the funds necessary for the project.

Q. Can you tell us the purpose of so hiding the funds of the District?

A. Yes, the project we were on was such that the enemy forces with whom we were at war were not to get any indication of how extensive the American Government was [fol. 137] pursuing the atomic energy project and our normal procedure requires the review of objectives by various Appropriation Committees in Congress, and the public records made thereof are available to anyone that wants to buy them, and the orders with regard to this project were that nothing would be done to disclose its purpose or the fact that it even existed, which was one of the reasons why we put the fence around this area.

Q. Did the General Accounting Office have anything to do with the Manhattan District?

A. In the early stages, no. We refused to give the General Accounting Office any information, and finally we decided to bring them in because of the tremendous backlog of auditing that they would have to perform, and I believe that that was somewhere in February 1943 or '44, I am not sure which, that we actually invited the General Accounting Office to establish an office at this location and at Richland, Washington. We at that time had a backlog of in excess of ninety thousand vouchers that we had paid out which had not been released to them at all. They had been kept here.

Q. Mr. Vanden Bulck, was GAO invited to establish offices at the two places you have mentioned because of their jurisdictional right, you might describe it, or simply as an extra protection to the AEC or rather the Manhattan District?

A. Well, under the law that the Comptroller General's Office established he has the right to review, for the purpose of compliance with the appropriations, all of the expenditures made by Government Agencies. It acted both as a protection to the contractor and to the Government Agency and the Manhattan District which main-

tained the payments as currently as possible. I would like to enlarge on that a little bit, Mr. Fowler. In order to protect the contractor from the reopening of some of these expenditures at a later date, and the possibility of him being assessed for reimbursements made to him or of having certain of these reimbursements disallowed, we deemed it in the interest of all concerned to bring the General Accounting Office in.

Q. Mr. Vanden Bulck, was this Oak Ridge project or whatever you call it, the Clinton Engineer Works, established by the Manhattan District?

A. Yes.

Q. Can you tell us the requirements to which the property had to conform in general in order to meet the desires of the Manhattan District?

A. May I ask this question: Do you mean the area itself?

Q. Yes, the physical necessities of the situation?

A. What we knew of the technical processes involved at that time indicated that we must have a tremendous supply of electric power in order to operate the plants. We also had to find an area that was isolated enough so as to permit the use of natural barriers and our own implementation to keep the general public off the area and prevent any knowledge [fol. 139] edge from getting out.

Q. Did you also need water?

A. We needed water, yes.

Q. So you have named isolation and electric power and water as being the three prime necessities?

A. That's right.

Q. When was this project established here?

A. I believe the first filing on the taking of the land took place in late July or early August, 1942, because I remember particularly Mr. Cline, who was the Chief Engineer for Stone & Webster, and who was responsible for the construction of the town and the Y-12 plant area, calling me and asking that I arrange for certain takings through the Ohio River Division. That is the earliest date. The actual name for the area, Clinton Engineer Works, did not come into existence until later.

Q. What do you mean by the Ohio River Division?

A. The Corps of Engineers has its real estate acquisition procurement decentralized to where each one of the division offices scattered throughout the country had as a

part of their operation a real estate section to acquire land, which the War Department disposed of when it became surplus.

Q. And that agency was the Ohio River Division?

A. The Ohio River Division was responsible for this area.

Q. Did the United States acquire the land comprising [fol. 140] this project area?

A. They did. Some of this they immediately purchased through negotiated sale. In other cases they had to file condemnation proceedings.

Q. Can you tell us the size of the area?

A. Somewhere around 55,000 or 56,000 acres.

Q. Can you tell the purpose of this acquisition by the United States?

A. The purpose was so that they would have sufficient land and sufficient isolation to construct a plant and town remotely enough located from the plant area so as to be a protection to the residents in case something went wrong or to give the plant the isolation it needed to prevent the public from seeing it.

Q. What activity was to be carried on in the area?

A. There were three operations contemplated for this area. The first one that was started was the electromagnetic separation process. The second one was the experimental plant which today is known as Oak Ridge National Laboratory but was actually a forerunner for the production plants that they actually constructed, and the third the gaseous diffusion process which is known as K-25 and operated by Carbon and Carbide Chemical Corporation.

Q. All of this is related to fissionable matter?

A. That's correct. Fissionable material as we know it [fol. 141] today comes in two forms: One in the form of plutonium which is produced at Hanford and the other U-235 which is extracted in either the electro-magnetic process or the gaseous diffusion process.

Q. Was all of this activity related to National Defense?

A. Yes.

Q. What was the stage of learning and also the stage of manufacture in those early days of the Oak Ridge Project? Did people know what they were doing with assurance?

A. No, not all the people. Some of the scientific person-

nel knew because they were responsible for the invention of the process.

Q. Did they even have well-laid-out and tested methods of procedure in dealing with fissionable materials?

A. No, because the entire history of fissionable material was comparatively recent. It was probably the largest calculated risk anyone ever took. All of our contracts in connection with plant operation specifically provided that the operator did not guarantee that he could or would produce anything; that he would do the best he knew how in operating the plant and producing the material the Government wanted but he never guaranteed that he would produce it because he was not familiar with any prior processes of separating fissionable material from its basic ingredient, uranium.

Q. Were these operations at Oak Ridge carried on under [fol. 142] risk of injury?

A. Yes, all operations were carried on on that basis, but early in the game the people who were responsible for the health of personnel working with this material were fairly well familiar with some of the peculiarities of the material and we took what we considered then the precautionary measures and all precautionary measures we could possibly take to protect them to the Nth degree, and actually we found out that the confidence we had placed in the Health Physicists was not misplaced because our record here is enviable from that score.

Q. Can you tell us whether or not there is any common provision in the contracts for the operators which holds them harmless, and if so who suggested that, what was the origin of the provision?

A. It originated with the negotiation of the contract with the DuPont Company. They actually were requisitioned for the job at Hanford and for that portion of the work that they did down here. Under the terms of the powers vested in the President by the War Powers Act, anything or any service could be requisitioned, and he would make suitable terms for payment. The DuPont Company insisted upon a complete "hold harmless clause"; as they pointed out, there is no previous experience or skill in regard to operating the plants or producing the materials, and they felt that they should not take such a risk strictly on their own ability. They had to have assurance by the [fol. 143] Government that regardless of what happened

the Government would pay the bill. That clause in the contract was submitted to the General Accounting Offices for their prior review, because we had doubt as to whether we were in position to write such an article in the contract, and the General Accounting Office concurred and permitted us to use it in view of the special nature of the project. To answer your question specifically, it was included in the contract with Tennessee Eastman Corporation, with Carbide and Carbon Chemical Corporation and the DuPont Company for the construction of the laboratory plant here and subsequently in the contract with the University of Chicago which operated the plant and in turn in the contract with Monsanto who took over the operation in July, 1945.

Q. You say that same provision?

A. That same general "hold harmless" provision was included in all contracts.

Q. You say originally DuPont insisted that such provision be inserted. Why was DuPont in position to be able to insist?

A. I assume that DuPont wanted to give its wholehearted cooperation without a thought that it was exposing itself as well as personnel to hazards of which it had no knowledge, in addition to which the technical nature of the plant was such that they did not know how far the public might be involved in any unusual happening in the plant, whether from the possibilities of explosion or noxious gases or other hazards.

[Vol. 144] Q. Did the United States find itself in position where it had to avail itself of private organizations such as the DuPont Company?

A. Yes, because the United States Government in its operations of the Government is not experienced as a chemical operator. It operates no plants for any of its services except some arsenals. It gets all of its powders and explosives produced by private interests, and in the main it needed the type of people that only private industry could supply. In that I am talking about chemists, physicists, metallurgists and so forth.

Q. What do you mean by the expression "DuPont was requisitioned"?

A. They were ordered by the President of the United States to take the job.

Q. Did DuPont want the job?

A. No, in fact they had a provision in their contract that permitted them to get out of the operation just as soon as hostilities ceased, that is, active warfare, not just a question of waiting until the Peace Treaty was signed but as soon as the shooting war stopped, DuPont wanted to get out.

Q. What compensation did the DuPont Company ask for in connection with their operations?

A. They asked for reimbursement of all of their costs plus a fee of one dollar. In the reimbursement of all of their costs they were paid all direct expenses plus an over-[fol. 145] head allowance to cover indirect expenses of their home offices, company plants and so forth, with the express provision in the overhead clause that if the DuPont Company, after it examined its experience, found that the overhead allowance was excessive they would return voluntarily the excess to the Government.

Q. Mr. Vanden Bulck, I want to call your attention to the document known as the Smyth report which is a publication printed in the United States Government Printing Office bearing the title, "A General Account of the Development of Methods of Use of Atomic Energy for Military Purposes under the Auspices of the United States Government, 1940-1945." This was written by H. D. Smyth. It is likely that General Humphreys and I will reach an agreement as to what parts of this book the Court may take judicial notice of. Let me ask you, Mr. Vanden Bulck, wherever in this report there is a reference to the Clinton Project or the Clinton Engineer Project or area or Oak Ridge Project do all such references relate to this project in which we are presently which has been commonly known as the Clinton Engineer Project?

A. Mr. Fowler, I have never read the report. I don't know whether those references are correct. I assume they are correct. I suppose the report was proofread before submission to the printer so I think that we can assume that that is probably true.

Q. Have you heard of any other Clinton project in the [fol. 146] program of the Manhattan Engineer District?

A. No.

Q. Or any other Oak Ridge Project?

A. No.

Q. Now coming more specifically down to the subject

matter of these causes, did you participate in the formation and execution of the contract between the Manhattan District and Roane-Anderson Company?

A. Yes.

Q. Can you tell us a little bit of the early contacts between the parties which later resulted in the execution of the contract and of the general circumstances?

A. The Town of Oak Ridge was built and ready for occupancy beginning somewhere around August, 1943. That may be 30 or 60 days off in the actual moving of people onto the area and putting them in houses, but the Government at that time was running the town, and like everything else, with the number of contractors involved it was felt that the Government would want to turn over to a contractor the operation of the City of Oak Ridge which included the operation of the water pumping station, filtration plant, electric distribution system, maintenance of roads and streets and maintenance of real estate. It would have resulted in the Government hiring a tremendous number of people, which the Manhattan District could not hire because it had personnel restrictions imposed upon it because it was a part of the Corps of Engineers. Therefore, the operation had to [fol. 147] be conducted by contract. That is not to be confused with the type of operation that is prevalent in our plants where technical know-how was needed and other types which the Government could not command. The Corps of Engineers has engaged in numerous projects and operated small towns in connection with some of its water storage areas and has had some experience in town operation, but because it could not get the number of people it needed it was determined to get a contractor in on the scene and have him operate the town under a direct contract with the Government. The District Engineer, Colonel Nichols, at one time asked me for my opinion with regard to getting the Turner Construction Company to operate Oak Ridge. The reason for that was that both he and I had had considerable experience with the Turner Company on the construction of the Rome Air Depot in upstate New York, where the Turner people had constructed an airstrip and numerous buildings, including an engine test building, and so forth. Our experience and relationship with them was such that we desired very much to have someone of that caliber come in here and operate this town, and we subse-

quently get together with representatives of the company and we then made and negotiated the details of the contract.

Q. The contract between the parties was initiated by Colonel Nichols acting for the United States?

A. That's correct.

[fol. 148] Mr. Green: And Manhattan District.

The Witness: I don't believe that the Turner Construction Company ever approached Colonel Nichols with the idea in mind that they wanted to operate the town.

Q. What was the attitude of Turner Construction Company when approached?

A. At first they were not very enthusiastic about it, but I believe that Colonel Nichols, because of his knowledge of the people comprising the organization, was able to convince them that they should do this, that in so doing they were helping us out and making a justifiable contribution to the war effort.

Q. Did the Turner Construction Company then cause the incorporation of Roane-Anderson Company?

A. Yes, the Turner Construction Company, as the name implies, is a construction company which has affiliations with the unions covering the labor on construction jobs which is the AFL. Coming into an operation such as this it could hardly be construed as a construction job, and different rates of wages would be paid than would be paid for construction work and accordingly they decided, in order not to have their relationship jeopardized on other work that they were doing as constructors, to set up a separate corporation to handle this operation.

Q. Can you tell us in fairly brief fashion just what kind [fol. 149] of work Roane-Anderson Company has done here under this contract?

A. Yes, I think I can. They maintain all of the streets in the town and the roads up to the plants. They operate the water pumping station and the filtration plant; they are responsible for the maintenance of the electric distribution system in the town and incidentally operating the water plant involves the water distribution system of the town; they operate the town sewage plant and its distribution system; they act for the Government in the letting of concessions and all needed services that a town of this type needs. They at one time operated the dormitories subse-

quently placed there on a concession basis; they operated the cafeteria, placed that on a concession basis. Later on they operated the guest house and put it on a concession basis at a later date. They also maintained all of the Government buildings in the town and have from time to time under special arrangements handled construction work for the Government on a sub-contract basis. They also hire on their payroll the police force of the town, but the actual control of the police force is direct by the Government. They likewise hire all of the Fire Department personnel which in turn is directed by the Government. They also hired all of the personnel that operate the hospital but who are under the direct supervision of the Medical Director of the Government.

Q. All of those things were done under the contract referred to in the original bill in this case?

A. Yes, I may add that they also operated the bus system on the area which includes the town transportation system and the bus system between the town and the plants and subsequently that was cancelled out and a separate contract was entered into with American Industrial Transit.

Q. What, if any, municipal services do Roane and Anderson Counties furnish within the Clinton Engineer Area?

A. The only services that I know of are due to the arrangements with the two counties involved that in the event of the apprehending of an individual who commits a crime or misdemeanor and comes under the Tennessee State Laws, he is arrested by one of the policemen of Roane-Anderson Company, but who also has been given arresting powers due to the fact that they are deputy sheriffs of both of the county sheriffs involved, and then the individual is then turned over to the county for whatever action is required in the case.

Q. Who maintains the schools and streets, for instance, within the area?

A. The streets are maintained by Roane-Anderson Company. The schools are maintained by Anderson County under a direct contract with the Commission or the Manhattan project, and we reimburse all of the costs of that operation.

Q. Now in your testimony you have referred to streets within the area and roads within the area leading up to the [fol. 151] plants. Who owns those streets and roads?

A. To the best of my knowledge the United States Government.

Q. You have mentioned water plants, and electric and water distribution systems. Who owns those?

A. All of that was owned by the Government.

Q. Is the same thing true of the sewage plant and distribution system and the dormitories and the cafeterias, the Guest House and the other to which you referred?

A. Yes, there is only one qualification I could make in that, although it still is Government ownership, and that is some of the Tennessee Valley Authority high lines going through here that are owned by Tennessee Valley Authority, but that is also a Government organization.

Q. Did you have any participation or direct knowledge concerning the entering into of the contract with Carbide and Carbon Chemical Corporation?

A. Yes. The work I did was started in New York and was finally concluded after we had moved our headquarters office to Oak Ridge.

Q. Who negotiated the contract there?

A. I believe it was General Groves who contracted Mr. Rafferty who was Chairman of the Board of Union Carbide Company.

Q. What was the attitude of Mr. Rafferty or his company?

A. Mr. Rafferty wanted very much to undertake the operation [fol. 152] for the Government. It was a new field in which they had had no experience, and they realized that such service as the type that they could furnish was necessary after the general inception of the process was explained to them, and he agreed that Carbide and Carbon would do everything in its power to help out.

Q. Did you participate in the actual formulation of the Carbide & Carbon contract as well as the Roane-Anderson contract?

A. Yes.

Q. I believe that the original Carbide & Carbon contract refers to plant K-25; is that correct?

A. Yes.

Q. You have also referred to the Oak Ridge National Laboratory, which is commonly referred to as X-10. Whom was the initial contract awarded to?

A. The construction of that was with DuPont. The first

operations, that contract was with the University of Chicago until June 3rd, 1945 at which time Monsanto took over the operation and they operated until February 29th of this year.

Q. At that time it was taken over by Carbide & Carbon?

A. Yes.

Q. Did you participate in the formulation of those contracts with the operating companies and the University?

A. Yes.

[fol. 153] Q. There has also been a reference to Y-12. What is that, the electro-magnetic process?

A. The electro-magnetic separation plant operated by Tennessee Eastman Corporation of Kingsport.

Q. Did you participate in the negotiations, in the formulation of the contract with Tennessee Eastman?

A. Yes.

Q. Was that plant later turned over to Carbide & Carbon?

A. That's correct. As the process went along the decision was to actually improve the gas diffusion process to the point that they no longer needed the electro-magnetic separation process.

Q. And thus we are correct in understanding that you participated in all of the negotiations for the contracts and with the people that I have named, Roane-Anderson Company and these three plants?

A. Yes.

Q. Can you give us the sense of urgency or pressure attending the formulation of the contracts and whether or not the doing of the work awaited the completing of a formal contract?

A. No, in each case we got the work started by issuing what was known as a letter contract, or letter of intent, which indicated the Government's intention to enter into a more definitive contract just as soon as the scope of the [fol. 154] work could be established and the various administrative requirements of the contract made definitive enough to put in a written document. The contracts in most cases were entered into long before the plants were actually completed, because they all involved the employment of large numbers of personnel that needed training. All those people were trained while the plants were actually being constructed, so that when the key was turned over to the

operator they had a group of people in position to go in and operate the plant.

Q. Were the formal contracts prepared in a leisurely fashion and with deliberation or was there some atmosphere of haste?

A. The formal contracts, if you will go back and check some of those, sometimes were dated almost a year after the letter contract was first placed with the company, because of the number of negotiations we had to have with the organizations to get an agreeable document to both sides.

Q. What were the sources of the various provisions under these contracts?

A. To a great degree they originated in the standard form contract that the War Department had prepared and used in its general operations in connection with the work. They had standard forms for construction of that operation for architect and engineer work, and we used applicable phrases from those contracts.

[fol. 155] Q. This "hold harmless" provision was that included in that type of contract?

A. No.

Q. Has experience pointed out any provision in the contract which were really irrelevant or not designed for the actual situation developed here?

A. Could you be a little more specific on that, Mr. Fowler?

Q. What I am trying to inquire about is whether under the haste and pressure of the war situation, these contracts in some particular may simply amount to a collection of provisions from antecedent contracts which might have related to different kinds of situations or operations?

A. Well, in general we had a fair idea of what the operation involved, and while as I stated before, a lot of the phraseology had its origin in War Department contracts, we were not bound by the normal regulations of the War Department and changed the wording to a considerable degree to suit our immediate needs.

Q. Well, we will come to one or two of the provisions that I have in mind. Mr. Vanden Bulek, did you participate in the formulation of other contracts which entered into the care and maintenance of this project area, such as Stone & Webster's and all of the rest of them?

A. Yes, I was one of the original parties to the Stone & Webster contract.

Q. Were there few or many of such other contracts? [fol. 156] A. There were quite a number of them although we attempted to place major contractors with known industrial operations and thus permit them to handle most of the phases under the operation by sub-contract.

Q. Is there or was there any counterpart in industry for the operations here conducted?

A. No, there was not.

Q. I am going to ask you to file the Roane-Anderson Company contract in the Roane-Anderson Company cases as Exhibit No. 1, and to file in the Carbide & Carbon cases the Carbide & Carbon Chemical Corporation contract as Exhibit No. 1 in those cases.

Mr. Green: It is stipulated and agreed by all of the parties hereto that as to the area constituting the Oak Ridge plant or the Clinton Engineer Works lying and being in Roane and Anderson County, Tennessee, the State of Tennessee retains all of its original jurisdiction and rights thereto and therein.

Mr. Humphreys: There is no element or question of cession involved in this case?

Mr. Green: None whatever.

Mr. Humphreys: That clears that phase of it up.

Mr. Green: It is stipulated and agreed that George Horr, President of Roane-Anderson Company and Vice-President of Turner Construction Company is present, and upon [fol. 157] examination would corroborate Mr. Vanden Bulek in his statement relative to the preliminary negotiations between the Manhattan District, and Roane-Anderson Company and Turner Construction Company and the mutual execution of the contract. That is agreed to generally.

Mr. Humphreys: Do you want to state that he would testify to the operations of the company to the same effect?

Mr. Green: Yes, add that to it.

Mr. Fowler: As to all of which Mr. Horr has personal knowledge.

Q. Mr. Vanden Bulek, I therefore ask you to file as Exhibit 1 to the proof of the complainants in the two Roane-Anderson cases the contract, being contract No. W-7405-ENG 115 referred to in the original bills which was dated

February 14, 1944, said Exhibit 1 also to include 15 modifications thereof each bearing a separate number.

A. I would like to add to that that while the contract was dated February, 1944, its effective date was somewhere in November, 1943.

Q. Further describing Exhibit 1, each of the modifications sets forth the contract number above stated and then is entitled "Modification No. so and so." I hand you Exhibit 1 as thus described and ask you if that is an accurate copy of [fol. 158] the contract and modifications described?

A. That is an accurate copy and the reason I know it is is that I personally had this copy prepared by our photographic reproduction group from the original contract on file in the General Accounting Office.

Q. Will you file it as Exhibit 1 to your deposition?

A. I do so.

Mr. Humphreys: You have checked it since it was prepared?

The Witness: My writing is up on top showing it as Exhibit "A".

Q. These same papers which compose Exhibit No. 1 were filed as Exhibit "A" to the original bill?

A. That's correct.

Q. Do you file it as Exhibit No. 1 to your deposition?

A. I do.

Q. Now, in the two Carbide & Carbon cases will you file as Exhibit 1 to your deposition in those causes, the contract and modifications which were filed as Exhibit "A" to the original bill, being contract W-7405-ENG-26 with modifications each bearing the contract number just given, and they being described as "Supplemental Agreement number so and so", being the first 21 modifications to the contract? Will you file all of those as Exhibit No. 1?

A. I have previously filed these as Exhibit "A" in connection with the original bill; isn't that right?

Q. That's right. Those are the same identical papers.

A. I do so. There is one of them No. 20 which is missing, that has never been consummated.

Q. Do you so file this contract with Carbide & Carbon and the first 21 supplemental agreements as your Exhibit No. 1 to your deposition?

A. I do so with the exception I believe of No. 20 which was never executed. There is one gap in there somewhere.

Q. Do you mean that they skipped a number?

A. It was done deliberately because we had hoped to write another supplement that involved some technical change that the contractor wanted in connection with his operations and we have never gotten around to working that out, so it still remains as a gap. I believe it is No. 20.

Q. I notice that there is no supplemental agreement No. 15, Mr. Vanden Bulek.

A. It may be 15. I thought it was 20. There is one number in the sequence missing which was reserved for certain changes in the scope of operation. It has never been executed.

Q. Now, going back to Roane-Anderson, have there been certain supplemental agreements or modifications executed in connection with the Roane-Anderson contract since modification No. 15, which is the last modification included in your Exhibit No. 1 in the Roane-Anderson cases?

[fol. 169] A. Yes, there have.

Q. I hand you mimeographed copies of modifications Nos. 16, 17, and 18 to Roane-Anderson contract, each of which is entitled "Supplemental Agreement", and ask you if those are accurate copies of such modifications 16 to 18 inclusive and if so, file those as Exhibit No. 2 in the Roane-Anderson cases?

A. Without personally checking these with the documents that I initialed, they appear to be in order. There are file copies that go around for initialing which I personally initialed, and the original signed documents conform with those. As I say, I assume that these are copies.

Q. Will you have those compared for accuracy?

A. I will be glad to make that statement.

Q. And supplement your testimony either by personal appearance if you complete the checking before we adjourn on these depositions, or by letter, which may be included in the record?

A. I will do that. 16, 17 and 18.

Mr. Fowler: Is that all right, Mr. Humphreys?

Mr. Humphreys: Yes.

Mr. Green: Explain the difference between modification and change order.

The Witness: A change order is issued under a change

provision of the contract which might change quantities of certain agreed-upon items to be increased or decreased depending upon the need, whereas a modification to the [fol. 161] contracts specifically requires the agreement between both parties to it and is added to the contract.

Q. Now, Mr. Vanden Bulck, in the two Roane-Anderson cases is it true that your Exhibit No. 1 and your Exhibit No. 2 include a full and accurate copy of the Roane-Anderson contract and all modifications and supplemental agreements up to this date, that is assuming you have checked Exhibit No. 2 for accuracy?

A. Yes. We have a modification No. 19 in process at the moment which has not been signed by all parties as yet to the best of my knowledge. Mr. Horr can verify that later or I can verify that and let you know about it.

Q. In the Carbide and Carbon cases, Mr. Vanden Bulck, you have already filed as a part of your Exhibit No. 1 all supplemental agreements through No. 21. I hand you now supplemental agreements No. 22 and 23 and ask you if those are accurate copies of supplemental agreements to that contract which have been entered into since the date of the filing of the original bill?

A. I would like to have the same reservation with regard to these as with regard to Exhibit No. 2 to the Roane-Anderson contract, Mr. Fowler.

Q. And you will make a similar indication as to whether they are accurate or not.

A. Yes.

Q. Will you file those two supplemental agreements Nos. [fol. 162] 22 and 23 as Exhibit No. 2 to your testimony in the two Carbon & Carbide cases subject to checking which you have indicated?

A. Correct.

Q. In connection with the Carbide and Carbon contract and supplemental agreements, I notice that there are quite a number of places where words have been obliterated from the exhibits. In all other respects, subject to the checking that you have mentioned you will do on Exhibit No. 2, these two exhibits set forth fully and accurately the Carbide and Carbon contracts and supplemental agreements?

A. Yes.

Q. Now in the Roane-Anderson cases, Mr. Vanden Bulck, I will call your attention to Article IX of the contract in

which it is provided in substance that title to all materials and so forth which the contractor purchases under the contract and for which the contractor shall be entitled to reimbursement, shall vest in the United States at such point or points as the Contracting Officer may designate in writing, subject to a right of final inspection. Can you tell me the origin in government practices of that provision and what it was intended to cover?

A. Yes, during the war when the War Department was engaged in tremendous expansion of industrial facilities for the production of war material, it often became necessary to place contract with contractors and manufacturers to process or manufacture equipment and material within the [fol. 163] limits of their particular field. I have in mind there that you place an order with contractor "A" who does a certain amount of preliminary work on the material and is then directed by the Contracting Officer to ship to contractor "A" for further processing or additions of the specialties that he is particularly qualified to manufacture, and they may conceivably go to three or four different contractors before it finally winds up in the Government Facility where it is ultimately used, and the real purpose of that paragraph was to establish the title to the material in the Government at any point that the Contracting Officer should designate, so as to permit him to ship it on Government bills of lading, and to take advantage of land grant rates, and so forth.

Q. Have procurements by Roane-Anderson under this contract been of the kind which you have described?

A. No, their procurements were for direct delivery on the project.

Q. Is the same thing true of Carbide & Carbon contracts?

A. In some cases yes and some cases no. Where it has to do with processing equipment that falls under the peculiar conditions that I have enumerated here before it would have been necessary to ship it from one point to another before final installation in the plant.

Q. Has such shipping been necessary under the Carbide & Carbon contract?

[fol. 164] A. I believe they maybe have had some of those, Mr. Fowler. I am not too sure that they have but

there have been certain changes in their plant facilities that might have involved such shipments.

Q. Now, Mr. Vanden Bulck, would you please state whether under either contract, the Roane-Anderson or the Carbide & Carbon, that the contractor has ever designated in writing a point at which title passed to the United States Government?

A. Do you mean the Contracting Officer?

Q. Yes, the Contracting Officer.

A. To the best of my knowledge, no.

Q. Mr. Vanden Bulck, I want to ask you just a few questions about the actual method of handling procurements by both Roane-Anderson and Carbide & Carbon. What has been your understanding of the time at which title passes, and the facts affecting that. By title passing I mean title passing to the United States Government.

A. In connection with a shipment which under the terms of the purchase they deliver f. o. b. the vendor or manufacturer's plant, it has always been my understanding that title passed at that point. To substantiate that, in a great number of cases, I believe in almost all of the cases the shipments were made on a Government bill of lading which was prepared by this office and forwarded on to the vendor or it was shipped on a commercial bill of lading with a notation [fol. 165] on it to be converted to Government bill of lading at destination.

Q. You say title passed. Passed to whom?

A. To the Government.

Q. Are the materials or procurements in the possession of Roane-Anderson Company and Carbide & Carbon labeled or branded in any way?

A. All property that permits its marking without injury is marked by either a stamp or brand or an attached label or a metal tag which indicates it is the property of the United States either by stating that it is the property of the United States, and it may be U. S. A. or United States Army or Atomic Energy Commission or some such initials.

Q. What exactly was the label used by Roane-Anderson Company in cases of procurement by Roane-Anderson Company, what lettering was on it?

A. I believe they used U. S. A.—R. A.

Q. When was that label attached to procurements?

A. As soon as the material was delivered at the receiving warehouse.

Q. Delivered by whom?

A. By the carrier or the vendor if he had his own delivery service.

Q. What is the meaning of that label U. S. A.—R. A.?

A. The U. S. indicates the property, the title to it as being vested in the Government. The R. A. is merely for a [fol. 166] segregation of the property that is used by the various contractors on the area in the interest of carrying out their required functions under the contract. In other words, we have so many contractors on the area that there are items of property which are common to all of them that conceivably could be shuffled around so that the Government's interests are not protected to the greatest degree, and we identify Roane-Anderson property or rather that Government property in the control of Roane-Anderson Company by this R. A., simply as a part of the overall symbol.

Q. Do you know what label was used in the case of Carbide and Carbon acquisitions?

A. I believe it was U. S. A.—C&CCC, but I am not sure of that. I cannot definitely state that.

Q. What was the meaning of that label?

A. It had the same meaning that was on the label placed on the property that was delivered to Roane-Anderson Company.

Q. When was the label attached to goods in the case of Carbide & Carbon?

A. They had their own receiving warehouse at the plant and it would be attached at the time the property was actually received.

Q. Received from the carrier or vendor?

A. Carrier or the vendor.

Q. Are the practices that you have described with respect [fol. 167] to receipt and label of goods prescribed by the Atomic Energy Commission?

A. Yes, and that was as a result of a regulation that the War Department had in effect for all of the War Department property whether it was on a property or property on civil works of the War Department. The Property Manual prescribed that all property should have attached or placed

on it or be marked in such manner that it clearly indicates it is property of the United States.

Q. Were the same practices adopted by the Atomic Energy Commission when it took over on January 1st, 1947?

A. Yes, the same rules and regulations that the Manhattan District project operated under were continued in effect by the Atomic Energy Commission.

Q. If the Roane-Anderson contract, for instance, should be cancelled, what becomes of the property in possession of Roane-Anderson here?

A. All of it is turned over to the Government.

Q. Is the same thing true of the Carbide & Carbon contract?

A. Yes.

Q. I will ask you, Mr. Vanden Bulek, since the Atomic Energy Act went into effect and since December 31, 1946, has the Atomic Energy Commission been engaged here in this Clinton Engineer area in the discharge of its duties and responsibilities under the Atomic Energy Act?

[fol. 168] A. Yes.

Q. Is that the whole purpose of the Commission's activities here?

A. Yes.

Mr. Fowler: It is agreed between counsel for the parties that Mr. Vanden Bulek's deposition shall be filed in both the two Roane-Anderson cases and the two Carbide & Carbon cases.

(The further taking of these depositions was adjourned until 9:30 a.m., December 14, 1948 when the further direct examination of Mr. Vanden Bulek was continued by Mr. Fowler.)

The Witness: I have checked the documents you have referred to yesterday and they are both correct.

Q. You are referring to both exhibits 2?

A. Both exhibits 2.

Q. Mr. Vanden Bulek, did the Clinton Engineer project and the work done there contribute to the construction of the atomic bomb that was used against Japan?

A. Yes, the Clinton Engineer project or the gaseous diffusion plant and the electro-magnetic separation plant

both separated material from basic uranium that was subsequently used in the bomb.

Q. Is the operation of this project still of prime importance in connection with military affairs of the United States?

A. Yes.

Q. The City of Oak Ridge is within the Clinton Engineer area?

A. That's correct.

Q. How large is the city now and what has been its population since it was created?

A. The extent of the city in area is roughly six miles long and from a mile to a mile and a quarter in width, the long axis running east and west. At the peak, the population was in the neighborhood of 76,000. Since the gradual reduction in plant operation, which was effected as a result of cutting out the less economical processing, it has reduced it to a population of about 36,000 at the moment.

Q. Can you tell us approximately how many miles of roads lie within the whole area?

A. I believe it is around 156 or something like that. I remember reading that not so long ago, about 156 miles of road in the area.

Q. Does the City of Oak Ridge have a police organization?

A. It has an organization which we call policemen who are on the payroll of the Roane-Anderson Company, but under the direct supervision of the AEC, with what police powers they get through the fact that these policemen are [fol. 170] deputy sheriffs of both Roane and Anderson Counties.

Q. I believe your testimony has indicated that the city has all of the usual municipal services, such as sewage disposal, electricity and water supply and so forth?

A. It does.

Q. To what extent, if any, do Roane and Anderson Counties contribute to the maintenance of this area, including Oak Ridge or any of the services such as police protection and all of the other usual municipal services that are maintained here for the benefit of the inhabitants and the people living here?

A. As far as the utilities are concerned or the maintenance of roads and streets, there is no contribution by the

county or state as to their upkeep. With regard to the Police Department, due to the arrangements we have made with the county officials involved, the sheriff's office, we apprehend persons who are violating a state law and then turn them over to the sheriff's office for jailing or necessary trial. That's the only service we get from the county.

Q. Can you tell us the annual appropriation of the Atomic Energy Commission for the maintenance of schools within the area?

A. Yes, I believe that for the year 1949 that they established a figure somewhere in the neighborhood of \$2,400.00, for school maintenance. That includes the salaries of teachers and maintenance of the school buildings. Only [fol. 171] a part of that we pay to the County of Anderson for the payment of teachers' salaries, and the reason we have the contract with the County of Anderson for what we refer to as school operation, is to give recognition to the time that teachers spend on teaching programs in Oak Ridge for seniority and I believe for participation in the State Retirement Plan for Teachers.

Q. All of the money that maintains these schools is supplied by the Atomic Energy Commission?

A. That's correct.

Cross-examination.

By Mr. Humphreys:

Q. As a matter of fact, those schools which are paid for by appropriation by the Atomic Energy Commission are operated as schools of the county in order that the pupils of the schools may attend accredited schools; that's correct isn't it?

A. That's correct.

Q. As a matter fact, although you put that in a collective sense to pay for the actual cost, they are operated as county schools in order that there may be proper credit given?

A. We made a contract with the county for the purpose of according the graduated student recognition that he has attended an accredited school system.

Q. That's right. The money is paid over to the county and the money is distributed by the county for education, and contracts for teacher employment are handled through

[fol. 172] the County Board of Education, and the supervision of the schools is through the County Board of Education. That's right, isn't it?

A. That's right. I might point out that the contract provides for a payment of the administrative cost of the county incurred in connection with its supervision of the schools, of around \$500.00 to \$600.00 a month. The Superintendent of the Schools at Oak Ridge is in effect selected by the Commission, and the county cooperatively places him on the payroll.

Q. But he is a county official?

A. That's right.

Q. And all of the teachers are county school teachers?

A. Yes.

Q. Recognized as such?

A. Yes.

Q. All prosecutions for law violations within the area are at the expense of the State Government, that is, the actual trial process?

A. Yes, we have no courts in the area. Therefore, it must be handled by the State Government.

Q. With regard to the roads in this area at the time it was determined that lands in this particular vicinity would be acquired for the purpose of building this plant or these plants and carrying on this project, it is true that there were certain roads in this area that were sufficient to serve the area?

A. I believe so. There were roads through here. There were people living here and they had a means of ingress and egress.

Q. When this territory was taken over and fenced off for secrecy purposes, those roads were taken over by the—I suppose the Engineers, United States Army Engineers, and they were added to as became necessary?

A. The existing roads and all of the lands in the area that comprised the Clinton Engineer Works were taken over by the Federal Government.

Q. But I mean the roads that were here were such as were sufficient to supply the needs and to accommodate the people?

A. That's right. I assume they were sufficient.

Q. And you have added to those roads as it has become necessary from time to time at your own expense?

A. Yes.

Q. As a matter of fact, because of the nature of your operations you have required many more roads than would ordinarily be required by a community of that many people?

A. I am not in a position to give you an authoritative statement on that but we have found it necessary because of having to isolate our plants to build direct roads of greater capacity than were in existence at the time when [fol. 174] we took over the area.

Q. So, in truth and fact, a large part of your road system is actually a part of your system of plant construction and plant location and plant maintenance?

A. That's right.

Q. Now, you are authorized under Section 9(b) of the Atomic Energy Act, and I read from that:

"In order to render financial assistance to those States and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes."

What payments, if any, are made to the state and local governments in lieu of such property taxes?

A. Up to this time, none have been made with the exception of whatever construction you can place on the rental of bridges that we paid for that cross the Clinch River, the Edgemoor Bridge, and the Solway Bridge, on which we pay a tax or rental to the county.

Q. Now, with respect to the question of police protection and the payment of that initial cost, that is, in the employment of men to act as local peace officers or watchmen or guards or policemen, I believe that at one time the State of Tennessee undertook to have the area opened [fol. 175] to the Tennessee State Highway patrolmen in order that they might assist in policing the area. Is that true?

A. To the best of my knowledge that question is one that came up very recently when we made a public announcement of the Commission's intention to open up the City of Oak Ridge and remove it from the restricted status it is in now, and I believe that there were individuals from

this office who went to the State Capital at Nashville and consulted with representatives from the Attorney General's office and discussed that question.

Q. You don't recall that very shortly after this area was fenced off for security purposes that that question did come up, and that admission to the area was demanded, and that there were negotiations on that account between the State and representatives of the operators of this place, and that it was finally agreed that there would be no such insistence by the State?

A. I have no knowledge of that.

Q. Now, on yesterday you testified at some length with regard to the background and the inception of this plant, but I am not exactly clear how it is operated presently. The overall head of it is the Atomic Energy Commission. The Atomic Energy Commission, does it operate these plants, use its own personnel or does it use the United States Army Engineers, or how is that?

[fol. 176] —A. No, the Atomic Energy Act provides for the appointment of five commissioners who shall be the head of the Atomic Energy Commission, one of whom is designated as a chairman. The Act also provides for the appointment of four directors, who have a specific responsibility under the language of the Act. It also provides for the appointment of a general manager who shall execute all of the orders of the Commission and carry on the general administration of the project. In turn, the general manager has re-delegated his authority to the Production Director, the Research Director, the Director of Engineering and the Director of Military Application. The Oak Ridge area, which comprises an operation at Clinton Engineer Works and also in the vicinity of Dayton, Ohio, is under the direct direction of the Director of Production. Mr. Franklin, who is the manager here, has been delegated the authority that he needs to supervise and oversee the area. The nature of the plant operation is such that the Government does not have on its staff or in its employ the technical means and qualifications to operate the plant. Each one of our production plants is operated by a contractor who has had considerable experience in the industrial operation of chemical separation plants, and that is the situation here today; whereby Carbide & Carbon operate the gaseous diffusion plant at K-25. They took over the operation of the electromagnetic

separation plant from Tennessee Eastman and are now operating it, and they took over the operation of the Oak Ridge National Laboratory from the Monsanto Chemical Company who had previously taken it over from the [fol. 177] University of Chicago.

Q. What plant is presently operated by Monsanto?

A. None.

Q. When did you say the operation of the experimental laboratory was taken over from Monsanto by Carbide & Carbon?

A. As of March 1st, this year.

Q. Actually, the contract between the Atomic Energy Commission and the prime contractors, except with regard to the operation of the experimental laboratory, those contracts are for the production of a known specific material in specific quantities, are they not?

A. That's right.

Q. And it is contemplated by those contracts that within the overall provisions of the contract, Carbon & Carbide will produce so much material of each type from each plant during the operating period, or does it have a production schedule?

A. If you are familiar with the Atomic Energy Act, it requires that the President of the United States each year direct the Commission to produce so much material to produce so many weapons. Those production schedules come down through the channel of the Atomic Energy Commission to this area here and here they are then passed on to the contractor. But the language in the contract still indicates that he would do his best to produce [fol. 178] that material. He has never guaranteed that he would.

Q. I don't believe that the Atomic Energy Commission and those whom it has appointed to attend to the actual supervision of its operation, not the contractors, they are not in position to produce any material themselves on account of lack of technical staff?

A. That's correct.

Q. So, actually, the methods employed by the contractor in producing the material, all of that is immediately and directly under the control of the contractor?

A. That is his know-how for which we hired him, that's right.

Q. In addition to the production of actual material, I

believe you say that there is an experimental laboratory that is maintained?

A. The Oak Ridge National Laboratory, I believe that is what you are referring to.

Q. Yes.

A. That's right.

Q. Do I understand that the purpose of that laboratory is the possible discovery of methods of application of the material being produced, or the discovery of more economical methods of producing that material, or what is the purpose of the maintenance of it?

A. It is primarily a research laboratory, that is, engaged in what we term basic research. There are two types that [fol. 179] industry recognizes, the basic which means delving into unknowns and sometimes it has reference to a specific purpose but not always certain of what you are going to get. The other is the type of research where we take a known discovered product and make application of it either in industry or other purposes.

Q. What is the primary object of the operation of this experimental laboratory? Is it the application of this material that has been made to various purposes?

A. I believe in actual practice it is about half and half.

Q. Now, Y-12 and K-25 plants have passed the experimental state and there are no purchases of supplies for materials at either of those plants for any other purpose than the production of the material contemplated by the contract. Would that general statement be true?

A. If you consider that there is always a certain amount of process improvement going on and research essential to that improvement being carried on in both of the plants.

Q. But the primary purpose of the operation of the plants and the purchase of supplies and materials is for the production of a set and agreed amount of material?

A. Yes.

Q. I believe you say that the methods to be used by the contractor in the production of those materials are such as the contractor within its experience and scientific knowledge [fol. 180] determines to be best to achieve that end and that it controls those operations?

A. It has control of the operations in that it operates the plant on a day-to-day basis. Periodically, or whenever one of his research scientists come up with an idea which indicates that there is a possibility of process improvement,

then it is submitted to us. Invariably, that involves considerable investment by the Government and additional facilities and before they can go ahead and make such an addition to the existing plant they get our approval.

Q. But when that approval is granted, then the ordering and purchasing of supplies, that right and power is in the contractor?

A. That all depends. Where, for instance, as at the present time, they have just completed negotiations with an architect-engineer for an addition to the plant, this will not be handled by the operating contractor. The reason for our keeping that separate is this: that as an operating contractor, he maintains a wage structure for industrial operation. There is a different rate structure for a construction job, and it would create management problems that he should not be confronted with by mixing the two within the same plant.

Q. But a contract of that character, your contract, contemplates the erection of a complete plant according to plans and specifications furnished, and that contractor has [fol. 181] the control of how he will build the plant except that he is required to meet a certain specified end when his work is done?

A. The operating contractor is responsible for the process design. He has technical supervision and responsibility to see that the plant is constructed and meets his technical design requirement. As far as structure itself is concerned, he has no responsibility for it. He may go so far as to actually procure the actual equipment because of his technical know-how.

Q. So that actually the Atomic Commission does not reserve any control and does not exercise any control over the manner in which this contractor will purchase his specified and slotted material, except that control which exists by reason of the amount of money that they will give him with which—

A. That was the facilities which were placed at his disposal in which to purchase material.

Q. Let me ask you this: In the operation of these plants through contractors has there been any other effort made except in this case to separate the cost of excise and privilege taxes from the cost of the article which is being bought for use by the Atomic Energy Commission or its contractors?

A. Do you mean at any other location in the Commission's operations?

Q. Yes, and with regard to any other type of excise taxes other than the Tennessee Retailer's Sales Tax?

A. I believe a similar situation exists in the State of New Mexico where a sales tax is also in effect and something of [fol. 182]³ that nature exists in the State of Washington with regard to the Business and Occupation Tax.

Q. But other than those two types of taxes, they are the only two types of excise taxes that the Atomic Energy Commission and the Government has undertaken to avoid that you know of. Do you want to amplify that?

A. I believe that statement is still correct. I think it exists. What the status of it is I don't know.

Q. What I am particularly driving at, Mr. Vanden Bulck, is this: Has the Atomic Energy Commission or the United States Government undertaken to cause the separation of the cost of other taxes from the sales price of any materials and supplies which it purchases in connection with the operation of its atomic plant? Has it undertaken to cause a separation of any other excise tax or privilege tax because that contributes to the sale price of those articles except with regard to this sales tax that you know of?

A. That's a difficult question. I can say this, that the General Accounting Office who reviews our expenditures here, has indicated to us an intense interest in the outcome of this litigation, because it is their contention that while we are discussing what we know here as the Sales Tax of the State of Tennessee in this case, Section IX(b) of the Atomic Energy Act, or whatever the section is that refers to exemption from taxes, has a much wider application than [fol. 183] does the sales tax, and just as soon as this case is settled, let's assume that it is settled in the Commission's favor, they will make an all-out effort to collect back all of the other taxes that have been paid as taxes.

Q. My question was this: that other than as regards this particular privilege tax, has the General Accounting Office ever required that you separate the cost of any other tax from the cost of any article purchased by the contractors in the operation of these plants?

A. Where it is levied as a separate tax on that article, and it is distinguishable that way, the General Accounting Office has requested us not to pay the taxes or to pay it under protest.

Q. You mean where there is a sales tax as such?

A. Yes.

Q. And that is the only form of privilege tax that the General Accounting Office has required the separation of from the cost price of the article purchased by the contractors at these plants here at Oak Ridge?

A. Yes.

Q. My recollection with respect to the Carbide contract is that the consideration for the work to be done is stricken out as secret material information that cannot be disclosed?

[fol. 184] A. I would have to see the contract to make certain of that but I believe that the general striking out of amounts had to do with the volume involved in the contract specifically. That was the intent, not to put the amount in, but as far as the fee to the contractor is concerned, that has to be in it because it is recorded in the hearings of the Appropriations Committee of the Congress as passed.

Q. What is the fee that is paid to Carbide & Carbon?

A. I can figure it out from the contract. I just don't know offhand. It may be somewhere between \$1,500,000 and \$1,900,000 a year, somewhere in there, maybe a little more. It would not be any less than that, I am sure. You can get that information from the record of the Appropriations hearings.

Q. Could you get the information and supply your deposition with it?

A. Yes, I can do that.

Q. It would probably be more available to you?

A. I think I have a copy of it.

Q. In addition to being paid a fixed fee as you have indicated, is it or not true that Carbide & Carbon under the contract has the right to expect an interest in any patentable discoveries that are made under its operation?

[fol. 185] A. I would have to refer to the patent article, but I believe it provides that all discoveries that it makes are and must be furnished to the Commission, and the Commission has the right to take out the exclusive patents or not as it sees fit, and it may in some cases indicate that it has no interest in the invention, at which time the contractor may if it so elects, take out a patent application.

Q. Reading from "Article VIII-R-Patent. / (a) It is

understood and agreed that whenever any patentable discovery or invention is made by the contractor or its employees in the course of the work called for in this contract, the Contracting Officer shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and the rights under any application or patent that may result. What is the purpose under that with regard to patents?

A. We maintain at this installation a group known as the Patent Branch who review all of the notebooks of the scientists and technical experts that work for the contractors. The contractor also examines the operations and whenever he comes across something novel or that has patentable [fol. 186] possibilities, he submits that in the form of a notice to this group. They examine it and conduct the researches and come up with a recommendation as to whether or not the patent should be vested in the United States. During the war period very few patents were actually taken out by the United States, for the simple reason that patent information is public information and we did not want anything in regard to the operation to get out as public information. However, a number of them have been processed since and I believe that they have some arrangements with the Patent Office to keep them secret. Very few if any patent applications have been referred back to the contractor, indicating that we have no interest, and under the terms of the Act of course we cannot turn anything back that has to do with the application or production of fissionable material.

Q. On yesterday, Mr. Vandén Bulck, you explained the paragraph in each of the contracts relative to when title to materials, tools, machinery, equipment and supplies should be considered as vesting in the United States Government, and at that time, I believe, your explanation of that article was that it was a provision put in this contract primarily because a similar provision had been in other United States Government contracts, because it enabled the Government, by designating title at the proper time, to take advantage of special freight rates that were available to it, with certain carriers. Was that correct?

A. That is correct. As I pointed out there were some procurements by a contractor of the Government involv-

ing processing through various manufacturing plants, not all of which were under the same contractor, and the material or the equipment had to be shipped from one point to the next, and the Government took complete responsibility for it. It had to do that in order to permit it to pay the contractor for the work it had completed in this chain.

Q. Now, that general statement in the contract in regard to when title shall vest in the Government is accompanied by certain provisos. Did your explanation of the matter undertake to extend to the provisos that are attached to that general statement?

A. The proviso that I believe you refer to requires that the Contracting Officer designate the point at which title passes; is that correct?

Q. Yes, the first proviso is that the right of final inspection and acceptance or rejection of materials, machinery, equipment and supplies at such place or places as he may designate in writing, is referred to the Contracting Officer?

A. That's right.

Q. How do you relate your explanation to that proviso?

A. In actual practice, the contractor places an order for equipment or supplies. They are delivered at Oak Ridge to these Government-owned warehouses that are assigned to the contractor for the execution of his work under the [fol. 188] contract.

Q. Let me interrupt you just a minute. Are they received there by the employees of the contractor?

A. They are received there by the employees of the contractor.

Q. Let me ask you this further question?

Mr. Fowler: Did you finish your answer, Mr. Vanden Bulck?

The Witness: I think I can add to this in just a moment.

Q. I am not going to get you off in your answer but at that point I wanted to ask you is there any inspection maintained by the Atomic Energy Commission at that point?

A. If I can go through the process, I think that will become clear.

Q. All right.

A. The material is received at the warehouse, and huge quantities of material come in. Because we hire a contractor for his technical know-how and management, we do not attempt to duplicate the force, and therefore 90 per

cent of the material that comes in has no check by a Government representative. Approximately 10 per cent of it is done selectively by spot check. He there examines the material with the contractor's inspector, and the two of them agree on the condition and he makes his report on that basis. Actually, we could not, without duplicating the contractor's entire force, engage in the inspection that the contract indicates.

[fol. 189] Q. So then the situation resolved itself down to this: If the contractor says he needs certain materials or supplies, he orders the materials and supplies, and they are delivered to him, and then he proceeds to use them in the manufacture of a certain designated amount of material under the contract?

A. That's right, with the exception of certain designated material which we must furnish him that he cannot obtain anywhere else. We attempt to have him buy everything he needs to operate the plant.

Q. An- except with regard to possibly, as you say, ten per cent, there is no check or inspection maintained by the Government or the Atomic Commission. He does all that himself.

A. He does all of that himself and we accept his operation on the basis of our ten per cent selective check.

Q. Now, this provision of the contract that you explained on yesterday contains another proviso: "Provided further that upon final inspection the contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the contractor shall be responsible for the removal of the rejected property within a reasonable time."

Is that proviso complied with?

A. Wherever our selective check indicates that something should be returned, yes. But invariably it is a joint opinion reached by the two representatives, the contractor's [fol. 190] man and our man, that some material when it arrived is not in proper condition for use.

Q. As a matter of fact, the proviso, if it contemplates inspection, it actually is not complied with because inspection does not take place except with regard to a very small per cent of the material?

A. That's right. We just maintain a selective check.

Q. As a matter of fact, have you ever executed any writ-

ten notice of acceptance as regards the large volume of material that is bought?

A. Yes, we do in each instance. There is a receiving report which the inspector signs, even though he has not inspected all material, on the basis of the type of check that he conducts on a small portion of the material.

Q. He actually does sign such inspection statement although he makes no inspection?

A. That's right.

Q. Now, on yesterday you made a statement with regard to your opinion as to title to the property, and while I did not object to it at the time, and reserved the right of objection on the trial, without waiving any right to make an objection, I would like to ask you in regard to that. Will you please state again what you said relative to your opinion as to when title to this property is vested in the United States Government?

A. In that connection, I have to refer to the various manuals [fol. 191] that the Army, when it was operating this project, had as its guiding influence, which manuals have been accepted by the Atomic Energy Commission until it can substitute its own manuals. They are enormous technical manuals, and I believe that Mr. Fowler can get those for you, but they state generally that in any case, the property or the material that is purchased by the contractor will in effect be the property of the United States as soon as it is purchased, that the title vests in the Government upon delivery and is immediately marked and identified as Government property when it is delivered at the plants at which it is to be used; that for instance, to move on a Government bill of lading it must be Government property, which was the point I explained, that it vests at the f.o.b. point, which may be the manufacturer's plant. We could not ship private property on a Government bill of lading. It must be all Government property. We have had times in the past that we had to obtain special freight rates, what is known as Section 22 quotation. It is possible to obtain that freight rate only with regard to Government-owned material. The reason for getting the rate in that manner is to hide from the general public the nature of the item being transported. Normally, to get a freight rate established, you have to go through quite a bit of publicity and file with various divisions to give them all an opportunity to examine the reason for the rate structure. We have

time and again in the past gotten quotations, but because [foi. 192] the only way we could get the rate established was to indicate that it was Government property.

Q. So then, your conclusion with regard to the time when title passed to the Government, I believe you say is actually based on statements contained in manuals that were gotten up by the U. S. Army Engineers at the time that operated the Oak Ridge plants and which manuals are still in effect now, having been adopted by the Atomic Energy Commission?

A. Yes.

Q. What are those manuals?

A. I don't know the numbers of them but the one having to do with property accountability, I believe, is known as TM 14-910. I believe that can be made available to you. What I mean is that those are the administrative regulations of the War Department which are passed on to us who are a part of it. It makes these statements. We have no other basis except to accept those at face value.

Q. You spoke of those regulations as regulations which were compiled by the United States Army Engineers to govern cost-plus contracts; is that right?

A. Yes, the Audit Manual specifically had to do with that.

Q. Are these contracts between the Atomic Energy Commission and the prime contractors involved in these suits such as could be fairly characterized as cost plus?

A. Yes, they are cost-plus-fixed-fee contracts entered into under the War Powers Act. That figure I gave you before [foi. 193] is \$1,920,000. That is where I estimated \$1,500,000.00 to \$1,800,000.00 as the fees paid for all of the operations at Oak Ridge.

Mr. Fowler: Paid Carbide & Carbon Chemical Corporation?

The Witness: Yes.

Q. Since these contractors are cost-plus-fixed-fee contractors, their relationship to the Atomic Energy Commission or to the Government is not essentially different from the relationship which any other cost-plus-fixed-fee contractor has to the United States Government; is that true or not?

A. That is not true. Actually, there is a different relationship in that we take a greater immediate interest in the expenditure of funds. In the normal Government

method of contracting, which is either a lump sum or a unit price arrangement where we were interested in the finished product at so much per unit or so much for the entire amount, we buy a completed unit at the end of that time, and generally unless you get into a major job where you make partial payment, that title does not vest in the Government until the unit is turned over to you at completion. It is completely the contractor's responsibility.

Q. That same situation is true, isn't it, with regard to this material that is being manufactured by the prime contractors for the Atomic Energy Commission, that is, they turn out a completed amount of material under a contract [fol. 194] for which you pay them a fixed fee, and the manner in which they manufacture it is left to their own technical science and skill?

A. The fixed fee is merely a payment to the contractor to cover its know-how and management ability and so forth. In addition to the fixed fee they are reimbursed for their actual operating cost in running the plant. The contractor, to give you a picture of how this operation works starts with a raw material at the in-put end of the plant, which we furnish to him, rather he cannot buy it. The basic material must be furnished by the Government. He then processes that through the plant and it comes out an end-product which he turns over to us.

Mr. Fowler: Who owns it during that progress?

The Witness: That's a legal question. I don't know whether I can answer that. But I would say we never lose control of it and since we furnished it initially I don't believe the title has ever passed.

Q. What you are speaking of is that material from one plant is delivered here and manufactured into—

A. No. Raw material from one of the other plants is delivered at the gaseous diffusion plant to go through the process and given to the Commission at the faucet at the other end of the plant. We then take it elsewhere where it again begins as raw material for processing into something else.

[fol. 195] Q. They get paid a certain amount for producing so many units of that material?

A. No, they get paid a fee for the operation of the plant whether they produce anything or not. I believe within the original contract it requires that a building or cell as we

refer to it, has to be out of operating and in complete shut-down for at least six months or more before their fee payment stops.

Q. Now, with regard to the operation of Roane-Anderson Company, Roane-Anderson Company is a private profit corporation, isn't it?

A. It operates as such.

Q. Who incorporated it in Tennessee?

A. I believe the Turner Construction Company did.

Q. Is it still a subsidiary of Turner Construction Company?

A. Yes.

Q. Who are the directors of it?

A. That I don't know. I would have to refer to one of these annual statements, but I am not familiar with the membership of the Board of Directors.

Q. And it operates the services which are spoken of in the contract for an operating fee which is mentioned in the contract?

A. That's right.

Q. Now, in connection with this operation and those services, what is the relationship between Roane-Anderson Company and your office as representative of the Atomic Energy Commission? To what extent do you undertake to control the operation of these services by Roane-Anderson Company?

A. Well, the contract provides for the type of services that they will perform in addition to which each year, before the end of the fiscal year they get together on a program of their operations for the ensuing fiscal year.

Q. In the interim, after you have agreed on costs and other factors of that character, the operation of all of the facilities at Oak Ridge is peculiarly the business of Roane-Anderson Company and you are not concerned with it?

A. We do not enter into the operations. That is their responsibility to operate.

Q. They buy all of the necessary supplies and materials and operate and you all pay the cost-plus-fixed-fee?

A. That's right, with the exception of a few minor items which carry a statutory limitation as to prices.

Q. You do not exercise the same immediate interest and supervision over the execution of the Roane-Anderson contract that you do in regard to Carbide & Carbon and do in regard to Monsanto?

A. Strange as it may seem, we do exercise greater supervision with regard to Roane-Anderson than we do the [fol. 197] others, for the simple reason that town operation and that sort of maintenance operation is general knowledge to engineer personnel which comprises the Corps of Engineers from which the basic organization here is drawn. We know about that organization.

Q. You are more interested in the way they do it?

A. It had its public relation aspect in it.

Q. Would you refer to the contract, to any provision in the contract which reserves for the Commission any control over the manner in which Roane-Anderson Company shall discharge the functions that it contracts to discharge under the contract?

A. There are throughout the contract innumerable places where the prior approval of the Contracting Officer, who is an agent of the Commission, or his authorized representative, is required before the contractor does anything about it.

Q. What are those in regard to, if you recall? You are more familiar with the contract than anybody else?

A. That the procurements in excess of a certain amount of money value have to be submitted for approval, changes and so forth.

Q. But that simply contemplates that if the cost of the operation exceeds an amount which it has been agreed upon should probably be sufficient, that they will have to get approval to expend any more than that?

A. No, that is not true. It has no reference to the overall amount of the set-up. We might approve a program [fol. 198] for Roane-Anderson Company to spend a million and a half dollars through its own efforts in some maintenance project in town. Actually, the way the contract is written, in actual operation there is a provision there that if he places an order in excess—and I cannot remember the amount offhand—I believe it may be two thousand dollars—he must get the prior approval of the Contracting Officer or his authorized representative to place that purchase order despite the fact that he has gotten general approval of the overall project. There are a number of other actions that he takes that require prior approval of the Contracting Officer.

Q. Would you say in actual practice the reservations made in the contract in favor of the Atomic Energy Com-

mission or the Contracting Officer are actually observed?

A. Yes, because we have had to maintain an organization to undertake our responsibility in that regard.

Q. Now, on yesterday you referred to Rules and Regulations with reference to operations in one answer that you gave, and at that time those Rules and Regulations were not present, and I don't suppose they are this morning.

A. Can you remember exactly in what connection I mentioned it. I perhaps can produce it for you?

Q. I am not as clear on that as I should be. We were talking about the best evidence objection.

Mr. Fowler: The Administrative Audit Manual was one [fol. 199] thing.

Mr. Humphreys: There was another one.

The Witness: I think it was in connection with the marking of property.

Q. That's right.

A. That's "Technical Manual 14-910". I believe you have it there.

Redirect examination.

By Mr. Fowler:

Q. Mr. Vanden Bulck, in your testimony on cross-examination you summarized according to your best recollection the provisions of the Army's Manuals governing procurements which are being observed or have been observed at Oak Ridge. I will ask you in practice has the handling of purchased materials conformed to the summary as you stated it?

A. Yes, it was necessary that we comply with those Manuals because we were subject to inspection by a group that at the time the Army was in control of the project reported directly to the head of the project, General Groves, subject to the take-over by the Commission. Subject to the transfer of the activities to the Commission, that same group reported to the Comptroller of the Commission in exactly the same inspection capacity. The inspectors from this special branch went into each operation, checking the operating procedure, checking the receiving reports, checking the property records, made up an audit statement and certified the audit, wherein they either pointed out the

[fol. 200] operations for correction or gave a clean bill in the event we were complying with that Manual.

Q. Do I understand that that was the procedure employed here until the Atomic Energy Commission took over, and it is still employed here today?

A. The only change that has been made is that the units have been de-centralized so that it now reports to the Fiscal Director at Oak Ridge instead of at the Washington level.

Q. I hand you War Department Technical Manual TM 14-910 promulgated by the War Department over the signature of General Marshall, the then Chief of Staff, dated October 10, 1945, styled, "Changes. No. 1." I will ask you to look at paragraph 37 under Section IV and read that into the record.

A. (Reading): "37. With respect to the receiving and inspection of materials and other property, it is unnecessary for the Contracting Officer to require Government employees designated by him to duplicate completely the quantity check and quality inspection performed by the contractor in connection with materials and other property received for use on a contract, provided:

(a) Written evidence of quantity receipt, quality inspection and acceptance is obtained from the contractor in accordance with the provisions of paragraph 42. When the [fol. 201] contractor's quality inspection functions are not conducted simultaneously with the quantity check the contractor's routines should provide for advising the Accountable Property Officer of the results of such inspections when completed.

(b) The Contracting Officer satisfies himself that the contractor's technical methods of quality inspection are competent, that the contractor's procedures with respect to quantity receipt and physical and accounting control of such materials and property conform to good commercial practice and that all such methods and procedures are adequate to protect the interests of the Government.

(c) The Contracting Officer, by frequent observation, assures himself that such procedures and methods are being effectively carried out."

That is the method under which we operate on this project.

Q. Both under the Manhattan District and the Atomic Energy Commission?

A. Yes.

Q. Also, Mr. Vanden Bulck, I will ask you to read into the record paragraph 42 of Section V of this same document, the reason why I make this request being that paragraph 42 is referred to in paragraph 37.

[fol. 202] A. That's correct. (Reading):

"42. The Accountable Property Officer must obtain written acknowledgement of receipt of all Government property furnished to the contractor. The contractor's receiving report, shipping documents or other forms listing the property, as prescribed herein, may be used to obtain the contractor's acknowledgement of receipt and in all cases these documents must be signed by persons authorized by the contractor to receive and accept property on behalf of the contractor. A written statement listing the names of persons so authorized will be obtained from the contractor by the Accountable Property Officer, and he will review the documents to ascertain that they are appropriately receipted."

Q. Mr. Vanden Bulck, I notice on some of these reports that are used by Roane-Anderson Company and by Carbide & Carbon a reference to the Administrative Audit Manual and in connection with that I hand you a copy of paragraphs 202.1, .2, .3 of Chapter 2 of Part II of the Manual for Administrative Audit of cost-plus-a-fixed-fee construction contracts; and ask you if the provisions set forth in those paragraphs have been complied with by the Manhattan District and by the Atomic Energy Commission in procurements at Oak Ridge, particularly directing your attention to paragraph 202.3?

A. Yes, those are the regulations under which we operate [fol. 203] and confirm what I stated before, that on the basis of an examination of the contractor's procedure, and a selective test check by a Government representative, we accept the actual receipts by the contractors of those items which are not physically checked by our representative.

Q. Is that paper which I have handed you an accurate copy of those paragraphs of the Administrative Audit Manual?

A. The only way that I could make that statement would be to actually compare it. I assume that whoever copied it

copied it correctly. It appears to be. I would not say definitely that it is.

Q. Subject to your checking this for accuracy and reporting back to us your conclusion as to its accuracy, will you file a copy of that as Exhibit No. 3 in the Roane-Anderson cases and Exhibit No. 2 a in the Carbide cases?

A. Yes.

Q. Now, Mr. Vanden Bulck, I broke into General Humphreys' examination of you to ask you who owns the materials which are processed in the plants at Oak Ridge. Do you recall the provisions of the Atomic Energy Act with respect to fissionable materials and the raw materials which may be manufactured into such?

A. If memory serves me right, I believe that Act states that title to all fissionable material is vested in the United States Government or the Commission and that small quantities may be allowed in the hands of private individuals [fol 204] under confidential regulations to be issued by the Commission.

Q. For instance, hospitals?

General Humphreys: Experimental purposes.

The Witness: I believe that you are talking about the publicity that has come out with regard to the use of radioactive material. The sort of material that generally is in the hands of hospitals for treatment of patients today is not fissionable material as such. This confirms what I stated before. I will read you from the Act here.

(Reading): "It shall be unlawful for any person, after sixty days from the effective date of this Act to

(A) possess or transfer any fissionable material, except as authorized by the Commission or

(B) export from or import into the United States any fissionable material or

(C) directly or indirectly engage in the production of any fissionable material outside of the United States."

I believe the Federal Register has published regulations on the manner in which source material may be placed in the hands of individuals other than the Commission, but it is in such quantities that it creates no hazard.

Q. Who owns the material as it goes into the input part of the plants here?

[fol. 205] A. We have that shipped down from one of our other operations offices. It is shipped on Government bill of lading or Government truck or other Government carrier and delivered to the contractor. It is owned by us at the time it arrives here.

Q. Who owns it after it comes out of the output end?

A. We take absolute control of it and can arrange for its shipment and delivery and so forth.

Q. With respect to the extent and control exercised by the Contracting Officer under these contracts, you have stated that in innumerable instances the contracts recite that supervision, affirmation or action by the Contracting Officer is required. You are perfectly willing to let the contracts speak for themselves on that score, I take it?

A. Yes, I could not remember all of the cases where the contract provides for such action.

Q. You illustrated your discussion of that subject by referring to a provision requiring the Contracting Officer's concurrence in procurement of more than two thousand dollars or twenty-five hundred dollars or some sum. In practice here at Oak Ridge has his concurrence been required in purchases in smaller sums than that?

A. No, in order to maintain our supervisory force to a minimum we have rigidly observed whatever limitations the contract contained and without any attempt to control the [fol. 206] contractor below those amounts. It would require additional personnel on our staff to take on a greater volume.

Q. Has that been an unvarying practice not to approve any purchases below the amount specified in the contract?

A. Generally, yes. Occasionally, the contractor will come across a procurement which he has some doubt about as to whether he is going to receive reimbursement for it, at which time he requests our administrative review and concurrence that it is not required.

Q. General Humphreys asked you whether or not Roane-Anderson Company is strictly a privately-owned corporation operating for profit. Can you tell us the sole purpose of the creation of Roane-Anderson Company?

A. Yes, I believe I went into that yesterday when I pointed out that the parent corporation, Turner Construc-

tion Company, as the name implies, is strictly a construction company and as such has to live with labor unions in the construction field, and pay a higher rate of wages than normally paid on an operation of this sort. In order that they would not disturb their relationship with construction unions we decided that it would be more advisable for them to organize a separate corporation just for this operation.

Q. And Roane-Anderson Company was incorporated as a result of that?

A. I believe that's true.

[fol. 207] Q. So far as you know, does Roane-Anderson do anything else besides perform its contract here exhibited?

A. To the best of my knowledge, it does not do any other business except the operations in this area.

Q. From time to time in your testimony there has been a reference to Government bills of lading.

General Humphreys, would you require that we exhibit that?

General Humphreys: No, I think everybody knows what he is talking about.

Q. Have Government bills of lading been employed in connection with procurements by both Carbide & Carbon Chemical Corporation and Roane-Anderson Company?

A. In some instances, yes. I can clarify that by saying that it depends entirely on the terms of the purchase. They will send out requests for bids, and if the accepted bid provides for delivery F.O.B. the vendor or manufacturer's plant, it is either shipped on a Government bill of lading at that time, or it is shipped on a commercial bill of lading with a notation on it "conversion to Government bill of lading at destination."

Q. Can you tell us why in some instances that conversion notation is put on the bill of lading and in other instances it is not?

A. Well, if it is not on there it means that the vendor or [fol. 208] manufacturer from whom the purchase was made has included the freight in his price, and it is not a separate item. In other words, we buy f.o.b. Oak Ridge and we do not consider freight except as a part of the purchase price. It is not considered separately.

Q. So, if any purchase is f.o.b. vendor's plant, the nota-

tion of conversion to Government bill of lading is uniformly put on the commercial bill of lading?

A. Yes, the contractor requests that the vendor or manufacturer put that statement on there.

Q. Now, various questions have been asked you about the inspection practices and you have described the selective or spot check inspection which has been made by the representatives of the Atomic Energy Commission and you have referred to the preparation of a receiving report signed by that representative. I now ask you, are those inspections and the receiving report concurrent with the receipt of the goods from the vendor?

A. When the material comes in and the package is broken open they provide a tally sheet. That tally sheet is the forerunner of the actual inspection and receiving of the report which is the typed document. The man out there physically inspecting the property does not necessarily have available to him a typewriter that he can prepare such a report on, but he makes this tally-in sheet which has the same thing on it from the standpoint of signature that the final inspection and receiving report did.

[fol. 209] Q. In other words, the basic material that is incorporated in the receiving report is complete but written down on a tally-in sheet at the time of the receipt of the goods?

A. That's right. That is the rough copy used by the inspector and checker.

Q. Is the inspection to which you refer made out when the package is broken open?

A. Yes.

Q. With reference to the questions asked you as to whether the resistance of the Atomic Energy Commission to state taxes is only applicable to the Tennessee Sales Tax, that is, so far as the Tennessee taxes are concerned, is that true, is the Tennessee Sales Tax the only tax of that state that the Atomic Energy Commission has resisted or will resist?

A. To the best of my knowledge, no. We will probably ask for consideration on some of the other taxes that are being paid that are intimately tied up with the activities of the Commission. What that will be I do not know, but for instance, at the moment we pay the carbonic tax. We could eliminate paying that tax by procuring the material directly

as a Government agency, but we find that economically that is unsound because we would then have to provide facilities for handling it, and on that basis we have paid the tax during the time the project was under the supervision of the [fol. 210] Army. However, the General Accounting Office has asked that question, that after the decision on the Sales Tax, what is our proposal with regard to the Carbonic Gas Tax, and I believe that if we can get a determination as to the meaning of the language in the Act that perhaps there may be other taxes that will be the subject of requests for refund.

Q. With respect to another phase of your cross-examination, General Humphreys pointed out that Section IX of the Atomic Energy Act authorizes the Commission to make payments to state and local governments in lieu of property taxes. Now, I don't want to start an argument as to the end result, whether detrimental or beneficial to the tax revenues of the state resulting from the establishment of this project, but tell me this: Has the creation of this area and of this city resulted in substantial tax payments to the State of Tennessee by the private persons brought here, in the way of gasoline tax, privilege tax and sales tax under this same Act?

A. Yes, none of the actions of the Commission have been with a view toward obtaining exemption of the individual in this area who is here by reason of working on the project. In other words, every one of the stores and concessions operated in town collect a sales tax, and I presume they return it to the state, and every one of the citizens living here pay that sales tax. We all purchase gasoline at local filling stations. The seven cents per gallon in that price is paid by [fol. 211] the people. No attempt is made to get an exemption. That is true of all of the taxes that are levied upon individuals in this area.

Q. They are not exempted simply by reason of any connection they may have with this particular project?

A. That's right. Carbide & Carbon operate cafeteria in the plant. As such we have been since the inception of the state sales tax collecting sales tax on the sales of various items, some over the counter and some on meals sold to employees and that tax is returned to the State each month, and there has been no question in regard to that.

Q. Mr. Vanden Bulck, you may or may not be familiar with the provision of the Tennessee Sales Tax Act that provides for part of the revenue being returned by the State to the various local governments, such as cities and counties. Have you heard of that?

A. I have read of that.

Q. Do you know whether or not the community or the City of Oak Ridge has received any such return of revenue from the state?

A. To the best of my knowledge, they have not received such a return.

Q. Do you know why that has been true?

A. I believe the purpose of the Sales Tax Act was to provide funds to increase the educational facilities in the state. We pay directly for the cost of our educational program. [fol. 212] in Oak Ridge, so, obviously, we are not returned anything for that purpose. Under the terms of the Sales Tax Act, certain surplus collections are distributed to the counties which are tied in, I believe, with the 1940 census which is the latest census of record, which keeps the distribution on the part of incorporated communities in the county within a certain population range. We are not incorporated in this area. We have no status here and our incorporated status cannot be considered in such distribution of such excess that might be returned to Anderson County.

Q. On the other hand, would you say that Roane County and Anderson County have benefited through the increase in population at Oak Ridge?

A. I expect so. They have benefited, possibly not to the extent that we could benefit if we were an incorporated community, since whatever contribution Oak Ridge makes to the total sales tax picture is spread over the entire state, whereas, Oak Ridge would get a part of it if we had a recognized status.

Q. These operations at Oak Ridge have resulted in the unloosening of tremendous payrolls in this community and in this state?

A. Yes.

Q. Speaking of the roads within the area before this project was established, what kind of country was this through here? Was it heavily populated?

[fol. 213] A. No, to the best of my recollection, it was just rolling farm land. The valleys were good for farm pur-

poses, but those were just grazing land. They had a number of regular country dirt roads with just one paved highway which we now class as the Turnpike coming through at Elza Gate and going out toward Oliver Springs and the Robertsville section on toward Wheat and in that direction.

Q. Were any of those old roads adequate to handle the traffic demanded by the increase in population in the establishment of plants here?

A. No, they were entirely inadequate.

Q. To what extent did the Manhattan District and the Atomic Energy Commission build or rebuild roads within the area?

A. Well, we built Highway No. 61 from what was just a two-car road to where it is a four-lane divided highway. We built the river road which runs down to the Edgemoor Bridge from what was just about one and one-half car width to two- and in some cases, a three-lane highway. We have built all of these other roads that go through this area from mainly dirt roads or black top roads into substantial highways that could bear the heavy traffic that moves over them.

Q. Did you have to build all of the streets in Oak Ridge?

A. Yes.

Q. What did you do with that one paved road that led through this area?

[fol. 214] A. That is today. I believe, buried under our Turnpike here.

Q. Was your Turnpike much wider?

A. Yes, the other road was just a two-car road and this is four-car width with a dividing strip.

Q. In general, has it been necessary to rebuild all of the roads and to build supplementary roads?

A. To the best of my knowledge, we built all of the roads that we needed in connection with our operation. There may be some little roads going back over the hills which were connections between farms located in this area, which by reason of their location we had no use for and did not need and therefore, they are abandoned today, I would say. I would like to make one general statement. I have made a lot of statements with regard to what goes on and how these things operate. I have been in position to do that because until June or August of this year I was directly responsible

for these operations. Organizationally, I was in position where the various units that conduct these things reported to me. Since that time I have not had any operating responsibility as such, and therefore, other people had to supervise or superintend those operations. Changes have been made in some of the details that I am not aware of since I no longer watch as I did the operation.

[fol. 215] Recross-examination:

By Mr. Humphreys:

Q. Do I understand that this statement is true since June?

A. Since about June or August of this year when we had a reorganization and I moved into the Special Staff position as Assistant to the Manager. Prior to that time, everything I said was to my knowledge.

Q. I believe you did explain that Oak Ridge is not an incorporated town?

A. That's right.

Q. It does not have a charter as a municipality from the State?

A. I believe it does not have the official status as an incorporated town.

Q. On the contrary, for security reasons it has grown up in an area that has been under fence and under intensive guard, and in order to even get in and out of it you have to go through certain security investigations as regards who you are and what your business is in the area; isn't that true?

A. To get in and out of the City of Oak Ridge requires only that somebody knows you and requests a pass. There is no investigation of the individual. The only check that is made is the check against a list of people who are barred from the area by reason of past association with the project or, for instance, we would not invite an international spy in here.

[fol. 216] Q. The truth of the matter is, it never has been actually a town or city except as you might apply that term to a large collection of buildings and people living in close proximity to each other?

A. That's right. It came into existence primarily because we had to have an area such as this for the construction of

the plants. It had certain natural advantages which caused this area to be selected because Knoxville or Clinton or Lake City or LaFollette were unable to absorb the numbers of people that they needed to operate the plants, and because there was not any other community here, this community was built.

(Later in the taking of these depositions, Mr. Vanden Bulck made the following statement):

I have examined Exhibit 3 in the Roane-Anderson cases, being Exhibit 2 a in the Carbide cases, and find it to be a correct and full copy of paragraphs 202.1 to 202.3 inclusive of Revision No. 16 of the Manual for Administrative Audits.

Further deponent saith not.

Charles Vanden Bulck, By — — —, Court Reporter.

Sworn to before me this 13 December, 1948, — — —,
Notary Public.

[fol. 217] Deposition of Ralph Callahan Filed July 1, 1949.

The next witness, RALPH CALLAHAN, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age, address and occupation.

A. Ralph Callahan, 48 years of age. My address is 111 Pomona Road, Oak Ridge, Tennessee. I am Comptroller of Roane-Anderson Company.

Q. How long have you been Comptroller of Roane-Anderson Company?

A. Since August 15, 1945.

Q. How long have you been located in Oak Ridge?

A. Since that same date, August 15, 1945.

Q. What are the duties of your position as Comptroller of Roane-Anderson Company?

A. To supervise the accounting and all financial matters of the company under the direct supervision of the Project Manager for Roane-Anderson Company.

Q. Who is Project Manager for Roane-Anderson Company?

A. L. C. Macneal.

Q. How long have you had first hand knowledge of the operation here at Oak Ridge?

A. I have had knowledge of the operations to a limited extent since its inception.

Q. Were you a party to any of the conversations which took place at the time Roane-Anderson Company or the Turner Construction Company was invited to undertake this work here?

[fol. 218] A. I was not a party to them.

Q. Now, calling your attention to this contract No. W-7401-ENG-115, and ask you if Roane-Anderson Company undertook the discharge of the responsibility and work that were laid down by the contract?

A. They did.

Q. Can you give us a picture of the work that Roane-Anderson Company have carried on under this contract?

A. First, I might point out that everything that they have done has been under the direction originally of the United States Engineer Corps, and after the Atomic Energy Commission took over the work under the direction of the Commission. We have during the course of our stay in Oak Ridge operated all of the management of the housing facilities. At one time we operated the dormitories; at one time we operated cafeterias; at one time we operated the bus system. We now maintain the roads and streets, the utilities systems including the light, water and sewage disposal. We obtain concessionaires, business people who want to do business in Oak Ridge, who enter into a license or rental agreement with it subject to the approval of the Commission.

Q. In general, can it be said that Roane-Anderson Company performed all of the functions described in Article I of Section 2 of the contract where a lot of work is described by way of illustration, but not of limitation?

A. At one time or the other in the course of our work here we have done those items.

[fol. 219] Q. Have you done considerable work with

respect to the construction or maintenance of highways and streets?

A. We have done in the actual construction of streets or highways, but we have practically the sole responsibility for the maintenance of those streets and highways.

Q. Now, referring particularly to Article I, paragraph 1 of the contract, and I notice that the original contract is dated February 14, 1944, that it says in part in Article I, paragraph 1:

"The contractor shall operate and maintain all Government-owned facilities, utilities, services, properties and appurtenances situated within the Clinton Engineer Works area in the State of Tennessee, as directed by the Contracting Officer."

I also notice that Modification No. 14 of this contract in Article I, paragraph 1 reads in part:

"The contractor shall manage, operate and/or maintain facilities, utilities, roads, services, properties and appurtenances situated within and/or outside the Clinton Engineer Works in the State of Tennessee, including, but not limited to, Government-owned facilities, utilities, roads, services, properties and appurtenances, as directed or authorized by the Contracting Officer."

You will notice, Mr. Callahan, that the original contract provided for Roane-Anderson Company operation of Government-owned utilities, whereas Modification No. 14 provides for operation not limited to Government-owned facilities. I ask you, has Roane-Anderson Company managed, [fol. 220] operated or maintained any facilities, utilities, roads and so forth that are not Government-owned?

A. Yes.

Q. To what extent?

A. To a limited extent only.

Q. Can you illustrate your reply?

A. There are a number of roads leading from highways or into major highways into the project that we maintain. For instance, there is a road from the Edgemoor Gate that has its terminus in Clinton Pike, I believe that is what it is called, that we maintain. That road is not, as I understand it, Government property. There are other roads,

some leading from the K-25 area over on the highways there in that section that we maintain.

Q. Is the maintenance of these roads not owned by the Government considered essential in the operation of the Clinton Engineer Works?

A. I presume that it is. We do such work as agent of the Government under its direction and it is not for us to inquire as to the necessity or the lack of necessity.

Q. Would you say that all facilities, roads and so forth that you have managed or operated which are not owned by the United States Government, have been maintained or operated by you strictly as an incident to the operation of the Clinton Engineer Works as a whole?

A. That is correct.

Q. Would you say also that the amount of work performed by Roane-Anderson Company or non-Government-owned facilities or properties is small or large in comparison with the amount of work done by Roane-Anderson Company with respect to Government-owned property?

A. The proportion of work done on properties not owned by the Government is extremely small; in fact, it is almost negligible in comparison with the work that is done on Government-owned properties.

Q. Has Roane-Anderson Company any business at all except the performance of its contract exhibited in this record?

A. It has no other business.

Q. Has Roane-Anderson used or had in its care, custody or possession any property that it did not regard as being Government-owned except the roads of the character you have described or other equally negligible items?

A. We have none. Insofar as I know, the only property that is owned by Roane-Anderson Company of a tangible nature is one automobile. Of an intangible nature, we have a small amount of money.

Q. Now, Mr. Callahan with regard to Article I, section 3 of the contract where it is provided:

"In the operation of the facilities under this contract and in the procurement of any and all supplies, materials, equipment necessary to the performance of the work hereunder, the contractor shall act as agent for the United States of America"

That is the first part of that paragraph. I will ask you, has the Roane-Anderson Company ever regarded itself as acting otherwise than as agent for the United [fol. 222] States in obtaining procurements?

A. It has not. In fact, we understood from the inception of our contract that we were to do no work or to take no action other than as agent of the United States of America.

Q. You may or may not be able to answer the next question, Mr. Callahan, but I call your attention to the reverse side of the purchase order form that Roane-Anderson Company used until recently, paragraph 3 under "Instructions, Terms, and Conditions" where it says: "This order does not bind or purport to bind the United States Government, its officers or agents." Do you know the source of that provision which appeared on the reverse side of that purchase order?

A. It is my understanding that when we came onto the area to commence work that we had no forms, and it was accordingly necessary for us to get forms and books of account set up, and in setting up our purchase order forms we used an old Stone & Webster form, and copied it, as far as I have been able to ascertain verbatim, probably without too much thought as to the contents of the wording, but presumably the thought was that if it was good enough for Stone and Webster it was good enough for us. In other words, we had to get something.

Q. Was that borrowing of phraseology somewhat typical of the compiling of contracts back in those days?

A. It was.

Q. Now, can you give us an idea as to the various kinds of motors, tools, equipment and so forth that Roane-Anderson Company buys in discharging this contract?

[fol. 223] A. It would be almost impossible, it would be impossible, to name every one because in the maintenance of the roads and streets it is necessary for us to buy road materials, in the maintenance of houses it is necessary for us to buy all types of plumbing, electric fixtures, wiring, lumber, and various types of composition boards. In other words, to answer the question with respect to housing would necessitate enumerating every item that went into a house. When we operated the cafeterias it was necessary to buy food. At the present time, we are buying food for the hospital, which is a limited operation and function of Roane-Anderson Company. We buy sup-

plies of all types. About the best answer I think I can give to the question as to what we buy is that we buy practically every type of material that would be necessary for the operation of this town in the performance of our contract, automobile supplies, parts, lumber, stone, and so forth.

Q. Mr. Callahan, I believe that one of the Roane-Anderson Company officials remarked to me at one time in reply to the same question I asked you, said "name anything, and we buy it."

A. That's just about correct. I asked one of our men the other day if he had bought any elephant's toes, and he said no.

Q. Of course, you have not bought any fissionable material either?

A. No.

Q. Have all of the things which you have bought been used in the performance of this contract exhibited here?

A. To that which we have bought as agent of the United States of America, the answer is yes. Recently, we bought a used car, and that is the only purchase that I know of [fol. 224] that has been made by Roane-Anderson Company in its private capacity.

Q. Now, Mr. Callahan, you said a few moments ago that there was some of the money of Roane-Anderson Company on loan to the Government in this project. Can you tell me how much money of Roane-Anderson Company was on loan to the Government for use in this project on June 1st, 1947, which was the date the Tennessee Sales Act went into effect?

A. I can but I will have to refer to a statement here. As of the close of business May 31st, 1947 this company had \$105,407.19; that was on loan to the United States Government.

Q. How much money was in the project originally that had come from the United States Government itself?

A. Actually on hand was \$234,526.59.

Q. Has there been any variation in those items since June 1st, 1947 either up or down?

A. Yes. From that date up to the present, the trend has been downward until as of the moment, as of July 1st, 1948 we had no money employed in the operation of this contract.

Q. Have the costs of purchases since June 1st, 1947 been paid out of the funds as you have described them?

A. They have.

Q. Is there a Modification to the Contract now in process of being prepared which will relieve Roane-Anderson Company of any obligation to loan its own funds to the project?

A. There is. In fact, we have signed such a modification.

Q. Has it gone into effect?

[fol. 225] A. It has gone into effect to the extent that the Government has advanced funds to us as of October 1st, 1948. It is my understanding the Modification will be signed by the Commission very shortly.

Q. What provision does that Modification make with respect to putting Roane-Anderson Company in funds for the carrying on of this operation?

A. The Modification contemplates that there would be two sources of Government money made available. One would be from the revenue collected from the operation of the Government-owned facilities. The other would be a direct advance of Government funds, and in order to ascertain the amount of such advance an estimate is made of our net operating cash requirements for a given period and the money is advanced accordingly.

Q. Are those advancements to be made at regular intervals?

A. Monthly.

Q. Does Roane-Anderson Company take out insurance on procurements which it purchases?

A. I might answer that question directly there. Roane-Anderson Company itself takes out no insurance. As agent of the United States Government, it does not take out any insurance on procurements, so there is no insurance.

Q. Do you know why no insurance is effected by it as agent?

A. Our contract requires that we procure only such insurance as may be approved by the Contracting Officer. No such insurance has been approved.

Q. Do you know as matter of fact whether the United [fol. 226] States Government has a practice of insuring its property?

A. It is my understanding that it is its own insurer.

Q. Is there anything further that you care to say about

the agency status of Roane-Anderson Company under this contract?

A. Other than to say that from the very inception of this work, both in our New York office—and incidentally, I was in the New York office of Turner Construction Company in 1943 when this contract was negotiated—as I mentioned before, I had no direct contract with the Army of the United States in the negotiations of this contract. For that reason, all of the data which I might have or might know in the nature of conversations would be purely second-hand, but I do know this, that the instructions given by the officials of the company to us was that we were to act as agent of the United States of America, and that fact was impressed upon us. When we came into Oak Ridge, we found that that was not only the intention of our company, but was from time to time and even is today strongly brought to our attention, first by the Army and second by the Atomic Energy Commission. So there has always been a definite understanding that we were acting as agent of the United States of America. All contracts that we write for the renting of houses, for business concessions, sub-contracting and every type of purchase and every type of operation it is very clearly and definitely stated that we are acting as agent of the United States of America, and in some of our contracts as a precautionary measure it is particularly [fol. 227] provided that we assume no liability in a private or corporate capacity, and that in making the contract we do so absolutely as agent of the United States Government.

Cross-examination.

By Mr. Humphreys:

Without waiving the right to interpose at the hearing objections to the conclusions reached by the witness as to the legal status of Roane-Anderson Company with the Atomic Energy Commission as agent of that Commission, I will undertake to ask him a few questions on cross-examination.

Q. What facilities have been operated by Roane-Anderson Company since June 1st, 1947 in Tennessee?

A. To answer that question in the proper way at the outset, Roane-Anderson Company has not operated or performed any work in the State of Tennessee other than that called for under this contract that we have been discussing.

With respect to the work performed by it as agent of the United States Government, under that contract we have maintained the roads and streets in Oak Ridge. We have operated the utilities, that is, we have maintained the distribution lines within the area, the water and sewage treatment plants, we have entered into agreements as agent with various businesses whom we refer to as concessionaires, we have subcontracted certain phases of our operation such as delivery of coal or garbage removal service; we have also maintained all of the Government buildings here; that is, by Government buildings, I mean buildings such as the [fol. 228] Administration Buildings occupied by the Commission, the public buildings made available to the public, such as the Recreation Halls where those Halls have been made available for public use and not operated as a private business. Up until November 15th, we operated five moving-picture shows here. We have maintained and managed the housing facilities involving the maintenance of the premises and the collection of rents, or occupancy compensation. To the extent provided by our contract, we have paid the salaries of the firemen and the policemen. We refer to such employees as mandatory employees for the reason that they are placed upon our payroll by direction of the Commission. Their work is supervised solely by the Commission, and we have neither the right to hire or fire them. Our sole work with respect to such employees is to pay them upon certification of the amount due by the Commission. Right at the moment I cannot think of anything else, but that is typical. In addition to that, I might mention that from time to time the Commission has directed us to do work of a special nature. We have maintained automotive equipment that is assigned to the company for use in the motor pool, and b- the motor pool, I mean the Government-owned cars that are used, say, for contract purposes. Carbide & Carbon has its own pool. Roane-Anderson has an allotment of cars assigned to it.

Q. How many of the services that have been operated by Roane-Anderson Company since June 1st, 1947 are services for which charge was made to the persons to whom the service was delivered under the contract?

[fol. 229] A. The management and maintenance of housing of course results in revenue in the form of money paid by the tenants.

Q. That money is collected by Roane-Anderson Company?

A. That money is collected by Roane-Anderson Company but is turned over to the Government. I might point out here that revenues made in operation are credited to the United States Government, and we take no part of those as such inasmuch as we are paid a fixed fee payable monthly.

Mr. Fowler: Had you finished your answer about other revenue-producing activities?

Mr. Humphreys: No, he has not.

The Witness: No. The letting of space to businesses has resulted in revenue. We have made a few sales of materials to contractors but in those case-, I want to point out that we have collected the sales tax on such materials and they paid it.

Q. Are there other revenue-producing services operated in addition?

A. The hospital has been a revenue-producing source. I might explain in reference to the hospital that that is what we call a semi-mandatory operation. There again, the nurses, physicians and certain of the hospital medical staff are mandatory employees, and our responsibility in the hospital has been confined largely to procurement of hospital supplies, paying the payrolls and collecting the money received from patients. That money in turn is also classed by us as Government revenue.

Q. Would it be possible for you to give some reasonably [fol. 230] accurate estimate of what per cent of your purchases of material and supplies are for revenue-producing services operated?

A. The only way that I could do that would be just to determine the amount returned for sales tax. I will say this, that it is an extremely small proportion, almost negligible, because we are not in the business of selling materials. It is only where such sales are made which would be a small part of the operation. Incidentally, there is one thing I did not mention.

Q. Excuse me, but I did not make myself clear to you. What I was asking you about is what proportion of your purchase of materials and supplies are for the revenue-producing services that you operate; what proportion of your services?

A. I don't know, because unless we were to trace that

all through, I could not tell. For instance, we buy lumber. That lumber may be used in a house which results in revenue. It may be used to repair or build a room on a Government building, which is not revenue-producing. It is quite possible if I were to go back to records we might be able to work out something but off-hand, I could not tell you what part actually results in revenue and what part results in maintenance, or capital cost to the Government.

Q: You spoke on your direct examination of other non-Government-owned facilities other than roads which you mentioned that are maintained by Roane-Anderson Company. What are those?

[fol. 231] A: Would you state your question again, please?

Q. I say, on direct examination as I understood it, you stated that under Article I of the amended contract with the Atomic Energy Commission Roane-Anderson Company was required to maintain facilities that were not Government-owned, and you mentioned in that connection that Roane-Anderson Company had maintained certain roads that led into the area on the assumption that it was desirable, being directed to do so by the Government and I wanted to ask you if there are other non-Government-owned facilities that you all do any work on, or maintain?

A. Insofar as I know of, there are none other. I don't think we do any work at all on the Tennessee Valley Authority lines that come through here, but even if we did something on TVA lines within the area that would still probably be classed as Government-owned, but we do not do anything for private individuals or private companies in that sense.

Q. Then, other than the work that is done on these roads and streets, there are not any non-Government-owned facilities that you do any work on?

A. That's right.

Mr. Humphreys: That's what I want to get pinned down. And further deponent saith not.

Ralph Callahan, by — — —, Court Reporter.

Sworn to before me this 13 December, 1948. — — —
— — —, Notary Public. My commission expires — — —.

[fol. 232] Deposition of Walter H. Leedom Filed July 1, 1949

The next witness, WALTER H. LEEDOM, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. Mr. Leedom, state your full name, age, address, and occupation.

A. Age is sixty, my address is 108 Everett Circle, Oak Ridge. I am Chief Purchasing Agent for Roane-Anderson Company.

Q. How long have you been Purchasing Agent for Roane-Anderson Company?

A. Since the beginning of the operation in October, 1943.

Q. Have you been at Oak Ridge since that time?

A. I have been here continuously since, in that position.

Q. Will you state your duties as Purchasing Agent?

A. My duties are to administer the Purchasing Department and its personnel, to examine and sign purchase orders and other administrative details in reference to the purchasing of supplies and the purchase orders in reference to the purchasing of material.

Q. In carrying out this contract with the United States Government filed as Exhibits 1 and 2 in this case has the Roane-Anderson Company engaged in an extensive procurement program?

[fol. 233] A. I should say very extensive and continuous.

Q. Has Roane-Anderson Company developed a standard procedure for the buying of materials?

A. That has been developed by arrangements with the Army and later the Atomic Energy Commission and of course the representatives of the General Accounting Office are stationed here.

Q. Have you a more or less standard set of forms that are used in purchases?

A. Yes.

Q. In this connection, Mr. Leedom, I hand you Purchase Requisition No. B 280 which has been filed as an exhibit to the original bill in this case, being page 1 of Exhibit B to the original bill. Is that a photostatic copy of an original purchase requisition of Roane-Anderson Company?

A. Yes, it is a photostat of the original requisition of a mandatory employee of Roane-Anderson Company. I mean by that Hackworth was.

Q. And he was connected with the Police Department?

A. With the Police Department which is a mandatory activity of Roane-Anderson Company.

Q. Has this form of Purchase Requisition been in use since Roane-Anderson Company started functioning here at Oak Ridge.

A. Yes, it has.

Q. Will you file this Purchase Requisition B-280 as Exhibit 4 to the Complainants' testimony?

A. I do so.

COMPLAINANTS' EXHIBIT #4

Walter H. Leedom

[fol. 234] Q. With whom do these requisitions originate?

A. They originate for the most part in the Division of Warehousing, that is for the purchases for stock. They originate to some extent in other locations of the Roane-Anderson Company operations and in the mandatory facilities, Police Department, Fire Department and Hospital.

Q. Do any such requisitions originate with the Atomic Energy Commission or its employees?

A. Not on this form. That is, the original demand for purchase might originate with the Atomic Energy Commission. So far as my activity is concerned they invariably originate with the Central Warehousing or other authorized individual for the preparation of a Purchase Requisition which is this form.

Q. This particular Purchase Requisition may be described as typical; is that correct?

A. Typical.

Q. Is any change in this Purchase Requisition form contemplated?

A. No change other than slight rearrangement of the spacing. Nothing involving any change in the nature of it or the effect of it.

Q. No, next, Mr. Leedom, I will ask you to turn to what has been filed as page 2 of Exhibit B to the original bill, being a photostatic copy of a Purchase Order and I will

ask you if that Purchase Order there is typical of purchase orders of Roane Anderson Company?

A. Yes, it is.

[fol. 235] Q. That is No. 40198, I believe?

A. That's correct.

Q. Will you file that photostatic copy as Exhibit 5 to Complainants' testimony?

A. I so file it.

COMPLAINANTS' EXHIBIT 5

Q. Now, I hand you, Mr. Leedom, a paper which purports to be a photostatic copy of the original of which Exhibit 5 is the fifth copy. Would you tell me if that is true?

A. That is true.

Q. I will ask you to file the paper which I have just handed you, being the original or first copy of Purchase Order No. 40198 as Exhibit No. 6 to Complainants' testimony.

COMPLAINANTS' EXHIBIT 6

A. I so file it. The interlineations, by the way, were made in the office of the concern receiving the order and are not a part of the original as mailed by us.

Q. And by interlineations just what do you refer to?

A. The circle around "Shipping directions," the cross marks across "Federal Excise Taxes", the notation under it, the struckout words in the description of two items and the part that follows the description of the second item. In fact, all of the longhand notations on the order are additional to it after it was mailed by us.

Q. How many copies are made of purchase orders?

A. Normally 17 including the original.

Q. Do the copies all correspond exactly with the original?

A. Not exactly.

Q. What are the differences?

A. The copies do not all have the conditions printed on the back of the original. The copies do not have this [fol. 236] notation in the lower lefthand corner, reading: "The material and/or equipment . . .", and so forth.

Q. How many copies conform exactly to the original?

A. No copy conforms exactly to the original. This notation in the lower lefthand corner appeared only on the original.

Q. Can you give us some idea of what becomes of the original and the various copies?

A. Roughly, the original of course is mailed to the supplier after it has been signed and released and if necessary after it has been approved. That is, the cases where approval is required by procedure. Along with the original is mailed the No. 2 copy which is known as the Acceptance Copy and on which the supplier makes notation of the fact and date of acceptance of the order with his signature.

Q. And mails that one back?

A. And returns that to us for the record. The receipt of the signed acceptance copy causes the purchase order to become a contract. The No. 3 copy is no longer used. The No. 4 copy is placed on file for the immediate use of the General Accounting Office whose representatives refer to it if they have any question regarding it. The No. 5 copy is no longer used. The No. 6 copy is a copy that serves for the purpose of receiving the approving signature of the representative of the Contracting Officer, and is used where his approval is required. The No. 7 copy is for internal use in the Accounting Department of Roane-Anderson Company. I would like to correct that. It is the [fol. 237] copy that is used with reference to submission of the Public Voucher Form No. 1034 to claim reimbursement. The No. 8 copy is the internal copy used by the Accounting Division of the Roane-Anderson Company for reference purposes. It is their work copy. The No. 9 copy goes to the Property Department of Roane-Anderson Company in order that they may have a record in the Property Account of any article purchased or otherwise disposed of in the Property records. The No. 10 copy is the Warehouse copy, that is, Roane-Anderson Company's Warehouse copy. No. 11 is the Receiving Department copy for use in identifying incoming shipments. No. 12 copy is the copy sent to the individual in the field who is furthest removed from the purchase and for his information. That is an information copy for the man in the field. The 13th copy is filed in the Purchasing Department in a numerical file for the purpose of locating an order by number. The 14th copy is the Purchasing Department's file copy to which all purchase papers are attached. It is the complete record file of the purchase. The No. 15 copy

goes to the Expediting Department for their use. No. 16 is retained in the office of the supplier.

Q. With respect to copy No. 11 which I believe you say goes to the Receiving Clerk—

A. I said the Receiving Department. This is a section of the Central Warehousing that performs the receiving function.

Q. When is the copy sent to the Receiving Department?

A. That is sent out at the same time the original order [fol. 238] is released. In fact, all copies are distributed at the time the original is placed in the mail.

Q. The Receiving Department would have this 11th copy at the time the goods arrived?

A. They had it before the goods arrived unless it is a confirmation of something that had happened. I mean, confirmation of a telephone order, all of which are confirmed in writing. There is no exception to that.

Q. Turning to the original of this purchase order which you have filed as Exhibit No. 6, I want to call your attention to certain particular provisions appearing on it. In the middle of the page towards the top we find the following language:

“Prices are f. o. b. destination unless otherwise specified.”

Can you tell me, is there any standard handling as to where the prices f. o. b., whether it is at destination or at the point of shipment?

A. That is as agreed. The purpose of this notation is to provide for that particular phase and the indication of price, since no price is complete without indication of the point of delivery. It is placed there for the purpose of simplifying the preparation of the order, since if it does not apply, it is necessary to type in the price notation that indicates the exception.

Q. Immediately following that is the notation “Transportation Charges must be Prepaid.” Does that statement apply in every purchase?

[fol. 239] A. That is not enforced. It is merely to encourage the prepayment of transportation charges where they are to be borne by the supplier. If they are not prepaid, we pay them.

Q. And transactions are handled both ways, that is, sometimes prepaid and sometimes not?

A. Yes.

Q. Going back to your description of the copies, Mr. Leedom, you said that copies 3 and 5 are no longer used and you will notice that we filed as Exhibit 5 to this testimony copy No. 5 of the particular purchase order that we are talking about here. How long was copy No. 5 used and how does it happen to be discontinued?

A. Copies 3 and 5 were required by the Army who kept files of the signed acceptance copies and No. 3 being provided the Army as a copy of the acceptance signature, and the No. 5 was a copy of the order that had received the signature of the Approving Officer, that is, of the authorized representative who approved the No. 6 copy for Roane-Anderson Company. That was discontinued by the Atomic Energy Commission as no longer necessary.

Q. Despite the fact that No. 5 has been discontinued, yet this Exhibit 5 here, which is copy No. 5 exhibits a typical purchase order so far as copies are concerned?

A. That's correct.

Q. What kind of carriers, what methods of transportation are used to get procurements to Oak Ridge?

A. Well, we used all conventional methods. Rail freight, motor freight, railway express, parcel post, air mail or [fol. 240] express, first class mail and in some cases by messenger.

Q. Where is the receiving point of Roane-Anderson Company?

A. The receiving point is one of the warehouses, at present Warehouse C-1; one of the warehouses in Oak Ridge.

Q. Further directing your attention to the original Purchase Order Exhibit 6, you will notice a notation in the upper right side: "Ship to: The District Engineer, Clinton Engineer Works, c/o Roane-Anderson Company." Has that direction always been given to sellers?

A. That has been given in every case. There has never been any exception to that. I am speaking of under Army operations. The words, "Ship to United States Atomic Energy Commission," instead of to the District Engineer and so forth were substituted when the form was adapted to the Atomic Energy Commission operation.

Q. Was the District Engineer an officer or employee of the United States?

A. He was an Army Officer.

Q. And since the Atomic Energy Commission has taken over you say that the direction has been to ship to U.S. A.E.C.?

A. To the U. S. Atomic Energy Commission in care of Roane-Anderson Company.

Q. And all purchase orders carry that direction?

A. They do.

Q. Now, on the right hand side below the box that we have just been speaking of, you will find the statement: "State and local and use taxes are not applicable to this purchase, which is for the use of the United States and such taxes should not be included in your invoice." Now, on the lower lefthand side contrasting with the language just [fol. 241] quoted, there is a statement also reading as follows:

"Note: Notwithstanding the printed notation to the contrary until otherwise advised by U. S. we will pay the State of Tennessee two per cent sales (or use) tax on this purchase."

Can you tell why that stamp notation was put on there and under whose direction?

A. That was added to the order in connection with the effectiveness of the State of Tennessee Sales and Use Tax Law by direction of the Contracting Officer.

Q. Did you understand it was put on there as an incident to negotiations with the State of Tennessee?

A. Unquestionably. That is why the printed notation was not changed. The use of the rubber stamp was considered temporary.

Q. Now, below the stamp notation of which we have just spoken and in the lower lefthand corner the following appears:

"The material and/or equipment to be supplied against this order is for the account of the United States Government and becomes property of the Government at the time it is shipped."

As I understand your testimony, that statement just quoted appeared only on the original of the purchase order?

A. That's correct.

Q. And that was the copy that went to the supplier?

A. To the supplier.

Q. Was that statement I have just read carried on purchase orders, all purchase orders of Roane-Anderson Company?

[fol. 242] A. It was up until the present reprinting, the use of which commenced about December 1st, 1947.

Q. We will talk about the changes on the reprinting in just a moment. I call your attention also on this original purchase order to the language above the signature line:

"Roane-Anderson Company, acting as agent for and on behalf of the United States, by W. H. Leedom, Purchasing Agent."

Have all purchase orders of Roane-Anderson Company been signed in that way?

A. They have, without exception.

Q. So far as you know, will purchases continue to be handled upon purchase orders bearing that kind of signature?

A. So far as I know, they will.

Q. In making purchases, Mr. Leedom, do you have to obtain the approval of the Contracting Officer on purchases involving cost in excess of a certain figure?

A. We do, in excess of \$2,500.00 it is required that we first obtain the approval of the Contracting Officer or his representative.

Q. In practice, has such approval been required on any purchases of less than \$2,500.00?

A. I don't know that it has, although we have obtained it, not prior approval but subsequent approval.

Q. In all cases or just some?

A. In all cases up to a point recently when it was arranged between the Atomic Energy Commission and Roane-Anderson Company that the approval of orders involving \$2,500.00 or less is discontinued.

[fol. 243] Q. Has there been a numbered purchase order used in the case of every purchase?

A. In every case where an order was made by telephone or verbally it was invariably confirmed by a regular numbered purchase order.

Q. I hand you and ask you to file as Exhibit No. 7 a photostatic copy of the reverse side of the original order, purchase order which you filed as Exhibit B, page 3 to the

original bill. Do you identify this as being an accurate photostatic copy of the Instructions, Terms, and Conditions" on the reverse side?

A. Yes, of that order.

Q. Will you file that as Exhibit No. 7 to the testimony of the complainants?

A. I so file it.

COMPLAINANTS' EXHIBIT 7

Walter H. Leedom

Q. What did you mean when you said it was accurate, of this particular order?

A. I mean that the revision of the purchase order form incidental to the present reprinting made a slight change in the printed terms and conditions.

Q. So far as Instructions, Terms and Conditions are concerned what was the change made by the revision?

A. The change deleted the third paragraph reading:

"This order does not bind, or purport to bind, the United States Government, its officers or agents."

[fol. 244] Q. And that change became effective December 1st, 1947?

A. Yes, with the release of orders of that date.

Q. Up until that time, paragraph 3 was on the back of the purchase order?

A. That's correct.

Q. How about paragraph 2, has that always been present on the purchase orders?

A. That paragraph appears on every order we have issued without change.

Q. Do you know the source of these Instructions, Terms and Conditions, where they were obtained?

A. Yes. At the time we commenced operations we had to hastily design a purchase order form and found it convenient to use for that purpose the form then in use by Stone & Webster Engineering Corporation who were operating, and whose forms seemed to be rather well gotten up, and this particular paragraph appeared on their form and was incorporated in ours.

Q. Now, you have said that this purchase order form has been revised. Do you have a blank form of the purchase order as revised?

A. Yes, a set of the revised form.

Q. How many of the copies in the set contain the terms and conditions on their back?

A. The original copy, No. 2, and No. 3, that is no longer used, 4, 5, 6, and 7.

Q. Will you file the original of the revised draft as Exhibit 8?

A. I do so.

COMPLAINANTS' EXHIBIT 8

[fol. 245] Q. What were the changes made when the revision was accomplished?

A. May I refer to a memorandum I have on that? There are several minor changes.

Q. Ail right.

A. The changes made in the form at the top of the revision were as follows:

Q. You were starting to read from a letter dated August 26, 1947 over your signature.

A. Yes, that would be my complete statement.

Q. Does that letter state the changes that were made upon the revision?

A. It does.

Q. Would you file a photostatic copy of that letter as Exhibit No. 9 to your testimony?

A. I so file it.

COMPLAINANTS' EXHIBIT No. 9

Q. As Exhibit 10, I will ask you to file a photostatic copy of a letter of United States Atomic Energy Commission dated September 3rd, 1947, over the signature of L. Paul McDowell which appears to be in response to your letter filed as Exhibit No. 9.

A. I so file it.

COMPLAINANTS' EXHIBIT No. 10

Q. File the letter of September 3rd, 1947 as Exhibit No. 10.

A. I so file it.

[fol. 246] Q. With respect to the first change referred to in your letter Exhibit 9, you have already discussed that, being the change of shipping directions from the District

Engineer to the United States Atomic Energy Commission. The second change appears to relate to an elimination of the reference to the Office of Price Administration and prices fixed by that office. With respect to the third and fourth changes referred to in your letter Exhibit 9, I will ask you why those two eliminations or changes were directed, namely, the elimination of the material in the lower lefthand corner of the front of the original and the elimination of paragraph 3 of the Conditions on the reverse side?

A. The printed paragraph at the lower lefthand corner of the original Purchase Order, having reference to the passing of title to the United States Government at the time of shipment was eliminated at the suggestion of the representatives of the Atomic Energy Commission, that it conflicted with the printed notation at the top of the order which read that prices were f.o.b. destination unless otherwise indicated. In addition, it was contended that the wording of that nature might jeopardize the subsequent right of the Government to reject the material after it had been shipped. In the case of the notation on the back of the order indicated as paragraph 3, that was discovered in the review of the wording of the order in connection with combing it for corrections, it was discovered that it had been placed there in error, and that did not apply.

Q. Was it in conflict with the matter over the space for signature?

[fol. 247] A. That was certainly the thought and certainly it should not have been on the form originally.

Q. In connection with purchases by Roane-Anderson Company as distinguished from the United States?

A. Absolutely not. I never heard it suggested by anyone.

Q. In your contacts with suppliers, Mr. Leedom, did any other papers pass as constituting a contract of purchase beyond the purchase order?

A. No, except that there are frequently orders where drawings or specifications become a part of the order and of course the quotation is a part of the purchase contract. Any document referred to in the order would naturally be a part of the order.

Q. Did any supplier ever make inquiry of you concerning your contract with the Government and its terms?

A. No, we have occasionally had inquiry made as to our credit status and we have frequently informed, in fact it

has been our practice in such instances to indicate the nature of our contract and give them a bank reference.

Q. But there has never been any accepted procedure for apprising suppliers of the nature of your relationship with the United States Government or the contents of the contract?

A. We have never had occasion to disclose any of the details of the contents of our contract.

Q. Next, I call your attention to the photostat which appears as Exhibit B, page 4 to the original bill filed in the first Roane-Anderson Company case, being an invoice by "Motorola, Inc.," and ask you if that is an accurate photograph of that paper?

[fol. 248] A. I would say that it is although invoices do not normally come to the Purchasing Department.

Q. Will you file that as Exhibit 11 to the Complainants' testimony?

A. I so file it.

COMPLAINANTS' EXHIBIT 11

Q. I notice that this particular invoice refers to Purchase Order No. 40198, which is the one we have been talking about. Is it usual for invoices of suppliers to refer to the numbered Purchase Order issued by Roane-Anderson Company as agent?

A. Yes, that is necessary.

Q. Can you tell us what the usual terms of payment were in transactions of purchases by Roane-Anderson Company?

A. The terms of payment, of course, are as a rule universal in industry, which might be two per cent for cash in 10 days and might be 30 days net or any other discount or time of payment that might be agreed upon.

Q. Did you ever have any supplier that retained title in order to insure payment?

A. No.

Q. I am going to ask you to file certain other papers which occur in the receiving of procurements. They might not fall under your particular jurisdiction but we will have other employees later to testify about them. I hand you a photostatic copy of tally-in sheet No. 86942 referring to Purchase Order 40198 and ask you if that is an accurate photograph of the tally-in sheet used in that case?

[fol. 249] A. It is.

Q. Will you file that as Exhibit No. 12?

A. I so file it.

COMPLAINANTS' EXHIBIT No. 12

Q. Next, I hand you a photograph of Materials Check Sheet, referring to Purchase Order No. 40198 and ask you if that is an accurate copy of that paper?

A. It is.

Q. Will you file that as Exhibit No. 13 to your testimony for the Complainants?

A. I do so.

COMPLAINANTS' EXHIBIT 13

Q. Next, I hand you a photostatic copy of Roane-Anderson Company Receiving, Inspection and Acceptance Report No. 106328 referring to the same purchase order and ask you if that is an accurate copy of that paper?

A. It is.

Q. File that as Exhibit No. 14.

A. I do so.

COMPLAINANTS' EXHIBIT 14

Q. To complete the series of papers used in a typical transaction, I will next ask you to file photostatic copy of the front of Roane-Anderson Company check No. 50890 payable to Motorola, Inc., which was filed as Exhibit B, page 6 to the original bill and ask you if that is an accurate reproduction?

A. It is.

[fol. 250] Q. File that as exhibit No. 15.

A. I do so.

COMPLAINANTS' EXHIBIT 15

Q. I will ask you to file the reverse side of the same check as Exhibit No. 16.

A. I so file it.

COMPLAINANTS' EXHIBIT 16

Q. And then, finally, I will ask you to file as Exhibit No. 17 if you can identify it as being an accurate portrayal, the three pages constituting "Public Voucher No. 40-7528" plus a fourth page which sets forth certain printed matter, I believe, appearing on the reversed side of page 1 of the voucher. Can you identify those sheets as being accurate copies of that voucher?

A. Yes, I recognize these and identify them.

Q. Will you file all four pages as Exhibit No. 47?

A. I so file them.

COMPLAINANTS' EXHIBIT 17

Q. Now, on the third page of Exhibit No. 17, between two red lines appears an item relating to the Motorola purchase to which the papers we have been exhibiting relate. Is that a continuation of the same treatment of that item?

A. That's correct. That's a part of the same transaction.

Q. On the first page, I notice that certain printed matter has been x'ed out, namely, the words "and that State or local Sales Taxes are not included in the amount billed." Can you tell us why that matter was eliminated?

[fol. 251] A. That is undoubtedly eliminated because the tax is being paid under protest.

Q. You have already referred to certain agreements we have with the State of Tennessee for the handling of the problem?

A. Instructions from the Atomic Energy Commission for handling it.

Q. Now, you have so far described the practice followed by Roane-Anderson Company in purchasing goods and materials so far as such practice comes within your jurisdiction. Has the same practice been followed by Roane-Anderson Company since you were first associated with it with the exception of the revision of the purchase order?

A. Yes, there has been no change in the procedures, practices, habits or thought with reference to these commitments.

Q. So far as you know, the same practice will be adhered to in the future?

A. So far as I know, it will.

Q. Mr. Leedom, there appears to be an article in the Roane-Anderson Company contract to the general effect that title to goods shall pass to the Government at a point designated by the Contracting Officer in writing. Do you know whether or not that designation has ever been given by the Contracting Officer?

A. I don't believe it has. We could find no evidence that that had ever been done.

Q. Has any question ever been raised by the Contracting

[fol. 252] Officer or anybody on behalf of the Atomic Energy Commission which would imply or expressly indicate that the Contracting Officer did not think that that title did not pass to the Government at the time of receipt of the goods. That's a pretty involved question?

A. I am not sure that I have the negatives and positives straightened out.

Q. I am not quite sure that I have got them straightened out. You say that the Contracting Officer had never exercised any right to designate in writing a point at which title should pass?

A. We cannot recall that he did nor can we find any record and I am inclined to think he has not.

Q. Has the Contracting Officer or any member of the Commission ever said that the passing of title was delayed until a point of time later than the receipt of goods?

A. No.

Q. Has the question of the time and place of passing of title ever been discussed between Roane-Anderson Company and the Atomic Energy Commission?

A. Yes, the Project Manager made that request in writing and I have not the date in mind but I drafted the letter which he signed, requesting—

Q. You mean the Project Manager of Roane-Anderson Company?

A. Yes.

Q. Has there ever been any action taken or words expressed indicating a place or time of passing of title otherwise than the place and time of receipt of goods?

[fol. 253] A. Nothing but the answer to that letter which was immediately recalled by the representative of the Contracting Officer who wrote it.

Q. How long was it between the letter and the recall?

A. Two or three days.

Q. Has Roane-Anderson Company ever had in its care, custody or possession, so far as you know, any property that it did not regard as being owned by the United States Government?

A. They have not.

Q. Has the Roane-Anderson Company, so far as you know, ever regarded itself as acting otherwise than as agent for the United States in purchasing under this contract?

A. I can say they have not.

Q. Do you want to amplify that statement?

A. I can amplify it by stating that I have never heard anyone in the Army, the Atomic Energy Commission or Roane-Anderson Company state otherwise than that title passed immediately from the seller to the Government directly.

Q. Do you mean that representatives of the Atomic Energy Commission have expressly said that it was their intention that title was passed directly to the United States?

A. I have never heard it questioned or discussed. In fact, it has been a general assumption.

Q. Does Roane-Anderson Company take out any insurance on property in its possession?

A. No.

Q. Now, Mr. Leedom, your deposition is being filed or [fol. 254] will be filed in two cases. The first of them involves the use tax and that case involves purchases by Roane-Anderson Company from outside the State of Tennessee, and that is Cause No. 65015. The other case is the one involving the sales tax where there is a purchase by Roane-Anderson Company from a vendor within the State of Tennessee, and that is Wilson-Weesner-Wilkinson Company case No. 65164. So that the record in the second case may be complete, I hand you "Purchase Requisition No. G7901-Y which is exhibited as page 1 of Exhibit B to the original bill in the Wilson-Weesner-Wilkinson Company case and ask you to identify and file that as Exhibit 18.

A. I identify it and so file it.

COMPLAINANTS' EXHIBIT 18

Q. And next the Purchase Order No. 40721, will you identify and file that as Exhibit 19?

A. I identify and file that.

COMPLAINANTS' EXHIBIT 19

Q. What copy does that appear to be?

A. This is a photostat of copy 5 which is a Corps of Engineers' signature copy.

Q. What was the date of issuance of that purchase order?

A. August 15, 1947..

Q. Is it true that the original of that purchase order would conform so far as the printed provisions are con-

cerned to the original of the purchase order used in the Motorola case?

A. It is.

Q. And that goes also to the "Instructions, Terms and Conditions printed on the reverse side?

[fol. 255] A. That's correct.

Q. Now, will you identify and file as Exhibit No. 20 Change Order No. 1 which changed Purchase Order No. 40721?

A. I so identify and file it.

COMPLAINANTS' EXHIBIT 20

Q. Next, will you identify and file as Exhibit No. 21 the invoice from Wilson-Weesner-Wilkinson Company?

A. I identify and file it.

COMPLAINANTS' EXHIBIT 21

Q. And as No. 22 the "Receiving, Inspection and Acceptance Report No. 111688?

A. I identify and file it.

COMPLAINANTS' EXHIBIT 22

Q. I now hand you photostatic copy of tally-in sheet No. 5495 relating to the purchase from Wilson-Weesner-Wilkinson Company. Will you identify and file that as Exhibit No. 23?

A. I identify and so file it.

COMPLAINANTS' EXHIBIT 23

Q. Was there a "Materials Check Sheet" used in connection with that particular purchase?

A. I don't know. There might not have been. It would not be necessary.

Q. Why wouldn't it be necessary, Mr. Leedom?

A. That's a large piece of equipment and may have been identified at sight and the Receiving Report prepared [fol. 256] directly. I don't know. I am suggesting that that might have happened to it.

Q. Did that sometimes happen in connection with large heavy shovels and such items?

A. There would be no detailed check to make of a large piece of equipment. It's a matter of identifying it.

Q. Next, there appears to be "Supplement No. 1 to the Receiving, Inspection and Acceptance Report" which you have just filed as Exhibit No. 22. Will you file this Supplement as Exhibit No. 24.

A. Yes.

COMPLAINANTS' EXHIBIT 24

Q. Will you identify and file as Exhibit No. 25 check No. 54005 issued by Roane-Anderson Company to Wilson-Weesner-Wilkinson Company?

A. I identify and so file it.

COMPLAINANTS' EXHIBIT 25

Q. Next, please identify and file as Exhibit No. 26 "Public Voucher No. 40-15549 or rather photograph of it, consisting of two pages?

A. I identify and so file it.

COMPLAINANTS' EXHIBIT 26

Q. I believe that voucher includes the amount paid to Wilson-Weesner-Wilkinson Company for heavy equipment?

A. That's correct.

Q. Is there any difference in purchase procedure where the purchases are made from suppliers outside of Tennessee [fol. 257] see from cases where the purchases are made from suppliers inside of Tennessee?

A. There is no difference in the purchases. You are speaking now about the means of accounting for the state sales and use tax.

A. There is no difference in the purchases. You are speaking now about the means of accounting for the state sales and use tax.

Q. No, I mean in the use of forms?

A. No, we use the same form. There is no reason for making any difference in the formal commitment.

Q. And the same general shipping directions and contractual provisions are employed in both cases?

A. The Instructions are noted in the Order to cause the material to be shipped as desired.

Q. Is there anything further, Mr. Leedom, that you might want to say about either the agency status of Roane-

Anderson Company or as to the time of passing of title of purchases to the United States of America?

A. I can think of nothing that has not already been covered in the questions and answers. No questions have been raised by any supplier. I have signed some 52,000 orders is about all, and no one has ever questioned their agency status that I can recall.

Cross-examination.

By Mr. Humphreys:

Q. Mr. Leedom, you have undertaken to explain certain [fol. 258] changes that have been made in the wording of purchase order forms. I notice from that photostatic copy of a letter dated August 26th, 1947 that the question of change in purchase order form was brought up in that letter that you wrote to the Atomic Energy Commission. Has there been any correspondence between Oak Ridge and the United States Army Engineers or the United States Atomic Energy Commission relative to the contents of purchase orders other than this one letter?

A. I don't recall any others.

Q. This is the only letter that has been written with regard to it?

A. We lived by the original form without any question having been raised about it.

Q. As a matter of fact, the original form was not the subject of the inquiry or approval by the U. S. Army Engineers or by the U. S. Atomic Energy Commission until you originated the question in your letter of August 26, 1947; isn't that true?

A. It was examined by someone, by whom I have forgotten now, before made effective, of course.

Q. Do you have any written evidence of that?

A. I don't recall it.

Q. Do you know who it was examined it?

A. No, I don't recall that.

Q. Do you know what authoritative position he had to pass on the contents of it?

A. Well, there would be no question about the authority [fol. 259] of anyone to pass on it because he would have been the representative of the Contracting Officer.

Q. If you could remember who it was would you suppose that is who it would be?

A. It would have been. We would not have consulted anyone else.

Q. So, as matters now stand, you are unable to supply the record with any evidence of the original order form ever having been passed on by anyone for the Contracting Officer?

A. Other than the evidence that over 43,000 had been approved by the authorized representative of the Contracting Officer.

Q. In other words, the purchases involved were approved?

A. That's right.

Q. Now, what was it that you say brought to the attention of Roane-Anderson Company the reasonableness of making changes in forms, that is, changes 3 and 4 as set out in our letter, why was it suggested that those changes be made?

A. I am sure that I understand the question.

Q. Why was it conceived to be necessary to change the order form so as to eliminate those matters mentioned in paragraphs 3 and 4?

A. Those changes occurred in connection with a general examination, a minute examination of the wording of the form by a representative of the Atomic Energy Commission, and they just discovered the wording that they thought had best be removed and we saw no reason for not [vol. 260] concurring. It did not seem to be important at the time, so we made them without any objection.

Q. Now, the first change that the Atomic Energy Commission ordered stricken out upon its examination of the order form was the provision in the order form to this effect:

"The material and/or equipment to be supplied against this order is for the account of the United States Government, and becomes property of the Government at the time it is shipped."

They ordered that to be eliminated from the purchase form?

A. That's correct, they suggested the elimination and made no objection.

Q. Do you have any communications or correspondence with the Commission wherein this matter was discussed?

A. No, as I recall that was by telephone and we saw no reason for taking any exception to their suggestion.

Q. The statement, "the material and/or equipment to be supplied against this order is for the account of the United States Government and becomes property of the Government at the time it is shipped," that statement is contrary to the statement in the contract that the goods, material and supplies become the property of the Government upon inspection and acceptance, isn't it?

A. I don't understand that to be the case. I don't know that I can recall the wording of the contract, but to the best of my recollection, it is that the point of transfer of title is to be indicated by the Contracting Officer, [fol. 261] is to be as indicated.

Q. I want to ask you if that was the occasion for the Atomic Energy Commission requiring the change as noted in paragraph 3 of the letter of August 26th to make the purchase order form comply with the provisions of the contract relative to transfer of title?

A. No, that was not it. There were two reasons: One was they thought—I did not agree with them and do not, but they thought—I am speaking of that wording of that notation—conflicted with the printed notation on the top of the order that provided that the prices were f.o.b. destination.

Q. How would that happen?

A. It would not have any effect but that was what they thought.

Q. Of course, this is the telephone information that you are giving?

A. Yes.

Q. What else was the reason?

A. The other reason was that they felt that the inclusion of that note might operate to deprive the Government of the right to reject material subsequent to shipment.

Q. A right reserved to it in the contract?

A. Well, the inherent right to reject it.

Q. That is a right reserved to it in the contract, to reject it upon inspection. If it does not care to accept it as Government property; is that right?

Mr. Fowler: We object to counsel calling upon the witness for an interpretation of the meaning of the contract.

He can ask him what has taken place in performance of the contract.

[fol. 262] Mr. Humphreys: What was the question?

(Read by Reporter): That is the right reserved to it in the contract, to reject it upon inspection if it does not appear to accept it as Government property; is that right?

By Mr. Humphreys:

Q. Further, for Roane-Anderson Company you recognized that that right is reserved to the Government, do you?

A. The Government has a right to reject a shipment at any time subsequent to shipment.

Q. Now; Mr. Leedom, was the subject of the change of these purchase order form provisions, was that brought up after these suits were commenced and on account of the suits?

A: No, before. These changes were incidental to the necessity for ordering a new supply of forms. Our supply of forms was down to the point that we had to order a new supply, and we took that occasion to make the changes to adapt the form to the Atomic Energy Commission's reorganization of the operation instead of the former Army reorganization, and in connection with that revision the entire form was combed for other corrections that might be in order.

Q. Mr. Leedom, in each instance these supplies and materials that were ordered and bought were paid for from Roane-Anderson Company funds and Roane-Anderson Company was reimbursed by the United States Government subsequently; isn't that true?

A. Of course, my activity concerns purchase only, and [fol. 263] not payment.

Q. Now, you were asked on your direct examination in regard to the practice relative to the issuance of a written order by the Contracting Officer in regard to the transfer of title, and you said that the "Project Manager" had requested a ruling relative to that?

A. That's correct.

Q. Do you have a copy of that letter?

A. I have a copy of a letter to the Contracting Officer of his response. There is a notation at the bottom of that is not a part of the communication. (Passes letter to counsel.)

Q. I believe you said that as of this date the Contracting Officer has never given any written notice under Article IX of the acceptance or rejection of any of the materials, tools, machinery, equipment and supplies which Roane-Anderson Company have purchased?

A. I don't recall making any statement on that subject, but I am not qualified to make that statement. That would pertain to receiving and warehousing operations.

Q. Then do I understand that as you interpret your testimony, you have not testified relative to this matter I have asked you about at all on direct examination?

A. I have not testified with reference to Government acceptance or rejection of materials. What I said was that representatives of the Atomic Energy Commission felt that the inclusion of that notation in the lower lefthand corner of the old form might operate to prevent the Government from rejecting a shipment after it had been made. Whether it has been continued or not I would not know. I am at least one step removed from that operation. We do, of course, have frequent rejections.

Q. But I thought I understood you to testify on direct examination when you were asked relative to Article IX of the contract in regard to the passing of title, I thought I understood you to state that so far as you were aware, no other event had been looked to to determine the time of the passing of title other than the fact—

A. I recall that question. My answer to that question I will be glad to repeat.

Q. What I am asking you in regard to, without just stating it in a different manner, is it true or not that the Contracting Officer so far as you are advised, has never given any written notice of acceptance or rejection?

A. I am not qualified to answer that question.

Q. Of the materials, tools, machinery, equipment, supplies and so forth bought by Roane-Anderson Company under this contract with the Atomic Energy Commission, and your answer is that you are not qualified to answer that?

A. No, that would be a receiving function in the Receiving Department activity.

Q. Who would know about that?

A. Mr. Holland would know.

Redirect examination.

By Mr. Fowler:

Q. I believe that what you have testified with reference [fol. 265] to a written designation by the Contracting Officer related to the designation of a point at which title passes?

A. That is correct, and what I said was that we had no recollection nor could we find any record of that point or those points having been designated as provided in the contract, and I don't think it has been done.

Q. And that is a different matter from acceptance or rejection for defects?

A. That's correct.

And further deponent saith not.

Walter H. Leedom, By A. C. Dore, Court Reporter.

Sworn to before me 13 December, 1948, McNabb,
Notary Public. My Commission expires: — —, —.

[fol. 266] DEPOSITION OF RALPH CALLAHAN—Filed July 1,
1949

The next witness, RALPH CALLAHAN, recalled for further

Cross-examination.

By Mr. Humphreys:

Q. Mr. Callahan, I wish you would explain the manner in which payment is made for these materials and supplies which are bought by Roane-Anderson Company under the contract, with whose funds they are paid for what method is followed in the reimbursement of Roane-Anderson Company?

A. To the extent that Government money was available, we paid for all purchases from the Government money and accounted to the Government for that expenditure and to the extent that Government moneys were not available we used funds which had been advanced by Roane-Anderson Company in its corporate capacity to Roane-Anderson in its capacity as agent. Those two funds were commingled so

that there was one working fund. All purchases were paid for from that fund. Consequently, I could not say as to any particular purchase order whether it was paid for by Government money or paid for by Roane-Anderson Company agency money.

Q. To what extent under the contract was it contemplated that the United States Government would advance funds to Roane-Anderson Company with which to purchase materials and supplies to discharge its contract?

A. At the inception of these contracts, the letter contract indicated that funds would be advanced by the Government [fol. 267] to carry on its operation, but because of the great amount of detail in getting plans and procedures worked out, the contract as finally drawn did not provide for an advance of funds by the Government but it was contemplated by the contract that the revenues could be used, in fact it was directed that they were to be used to reduce the cost of the work. To that extent the Government did permit us to use their funds in the payment of obligations arising under this contract.

Q. I thought I understood your statement this morning—of course, I am just trying to get my own mind clear on that—I thought I understood you to say that revenues collected were kept separately and paid over to the Government because this was a cost-plus contract?

A. That is a rather complicated accounting procedure. Initially, all monies—and this is solely for accounting purposes—when received are credited to an account called a Collection Account and a Bank Account is maintained under that name. As money is required, transfers are made from that Collection Account to a Disbursing Account and in that Disbursing Account is where the commingling of the Government funds with the agency funds occurs. There was no reason other than the fact that it would facilitate auditing that a separate account was established for collections, and to carry that a step further, we withheld—I might say this, that moneys on the collection of revenues were returned to the Government or paid over to the Government by a credit-[fol. 268] ing process. In other words, if we spent, if it showed we had spent for purchases \$100,000.00 and the money had previously been spent from this Disbursing Account, on the Public Voucher which was rendered to the Government we showed expenditures \$100,000.00 and deduc-

ted from that \$100,000.00 of revenue with the consequence that the amount was zero. In all cases it did not work out mathematically that way, for the reason that we might have spent \$1000,000.00 without getting credit for but \$50,000.00, in which case it built up a revolving fund of Government money and in that way we retained enough of the revenue money insofar as it was possible to do so, to operate this contract, but I don't want to give the impression that the revenues and what we were able to build up from withholding revenues was sufficient at all stages of the contract wholly to finance it. As the work progressed and as the income from this area became greater, it was possible to finance the work entirely from Government revenues by simply holding them intact, but there was a time when the company in its private capacity did advance money to this agency contract, as we term it, to supplement Government moneys.

Q. Do you have any office record that would support your conclusion that the Roane-Anderson Company as a corporation loaned Roane-Anderson Company as an agency money, or is that just your assumption as to the character in which the parties acted?

A. That's my assumption.

Q. That is not supported by any corporate records?

[fol. 269] A. Not to the extent of any corporate records except that under our present accounting system all of the records and accounting records are referred to as the Roane-Anderson contract.

Q. So, without requiring the Court to get all of its understanding exactly from the wording of the contract, it was not contemplated that the money to buy materials and supplies would be advanced by the Government, but that Roane-Anderson Company would advance that money except that it could look to be reimbursed from the revenues and also of course from the Government?

A. I would not say that. It was contemplated first that the revenues would be used, and the contract specifically provides that the only purpose for which the revenues can be used is to reduce the cost of the work, and in order to reduce the cost of the work obviously it would mean that you first spent it and then credit the amount against it. At the time this contract was established and no one knew exactly to what extent the revenues would be sufficient, so

that in the early stages it was necessary for the company to advance certain moneys. Now as to whether, without trying to reach any legal conclusions as to the effect of it, it might be maintained that to the extent we spent our own money we were reimbursed, or to the extent we advanced money it was a loan to the agency contract. I would simply say it was our understanding and the way that our philosophy of operation was conducted that we always considered that it was an advance from Roane-Anderson Company in its private [fol. 270] capacity to Roane-Anderson Company in its agency capacity, and our records are so set up that that implication in my opinion can be drawn from it, and that has been since the inception of the contract.

Q. May it be that your philosophy in that regard is in anywise shaped to meet the tax questions that might arise on account of tax liabilities?

A. No, I would not say so for the reason—you didn't ask my reason.

Q. No, I did not.

A. Simply for the reason that it is immaterial to Roane-Anderson Company in that it is a purely financial proposition as to whether this sales tax is paid to the State of Tennessee or not.

Q. It is not immaterial to the State of Tennessee.

A. I believe I have a copy of our original letter of intent.

Mr. Fowler: Suppose we put that letter in the record.

Mr. Humphreys: It is in the record.

And further deponent saith not.

Ralph Callahan, By A. C. Dore, Court Reporter.

Sworn to before me 13 December, 1948, McNabb,
Notary Public. My commission expires: — —, —.

[fol. 271] Deposition of Nobel J. Holland Filed July 1, 1949.

The next witness, NOBEL J. HOLLAND, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fewler:

Q. State your full name, age, address and occupation.

A. Nobel J. Holland, 332 East Fairview Road, Oak Ridge, Tennessee, General Superintendent of Warehousing for Roane-Anderson Company.

Q. How old are you?

A. Thirty-five.

Q. How long have you held the position of General Superintendent of Warehousing for Roane-Anderson Company?

A. Since July 23rd, 1944.

Q. What are the duties of this position?

A. To receive, store and issue all materials consigned to Roane-Anderson Company.

Q. As an incident to the discharge of your duties in that connection, are you familiar with the way in which shipments received at Oak Ridge upon order of Roane-Anderson Company have been handled?

Q. Well, to our extent of handling them, yes, I am familiar with it.

Q. Is the receipt of goods or materials and so forth which Roane-Anderson Company orders under its contract with the United States Government under your jurisdiction?

[fol. 272] A. Yes.

Q. Are we therefore to assume that you do know the way in which they are handled when received and what is done with them?

A. Yes.

Q. Will you tell us the procedure that is gone through with upon receipt of those goods and first tell us is there a receiving point for purchases of Roane-Anderson Company in the Oak Ridge area?

A. Yes.

Q. Where is that point?

A. That is C-1 warehouse.

Q. Is that a Government-owned warehouse?

A. Yes.

Q. What happens when goods are received there upon the order of Roane-Anderson Company?

A. The goods are inspected at the time the common carrier delivers them to our receiving warehouse for damage and number of containers, and then we open the containers and visually inspect and physically count all items in those containers, preparing the proper field receiving document at the time of inspection.

Q. As to number of items, what do you check against?

A. We compare the number of items against the vendor's packing list together with our copy of the purchase order.

Q. Does that also provide a check against the quality or kind of item?

A. Yes.

Q. Is such a comparison and inspection made when received?

A. Yes.

Q. Do you actually uncrate the goods?

[fol. 273] A. Yes.

Q. At some stage in the process is a Government label or brand put on the goods?

A. Yes.

Q. What is the nature of that?

A. In the instances where we have the proper surface of wood, we will burn the symbol with an electric iron. "U. S. R. A."

Q. What do those letters mean?

A. That they are the property of the United States Government, and that the Roane-Anderson Company is the custodian.

Q. Just when is that branding or labeling done?

A. At the time of the receipt within the Receiving Warehouse.

Q. You have said that a part of that procedure involves the preparation of particular documents. Just what do you mean by that?

A. We have a tall-in form that is used as a field document, Rec.-6.

Q. I hand you at this moment document filed as Exhibit 12 to complainants' testimony and ask you if that is the kind of document you are talking about now?

A. Yes.

Q. Just describe the procedure in filling that out, what is done and who does it?

A. The checker, receiving and issue clerk will take from the transportation document or the common-carrier's document the packing list and prepare this document showing the vendor, shipper, purchase order number, date of arrival, how it was shipped and all other pertinent information that might pertain to this shipment, such as express or [fol. 274] waybill number, transportation bill, whether it was freight paid or collect. In case of carload shipments the car number and initials and whether or not the seal was broken and by whom. Then he indicates the number of units received that is, cartons, crates, boxes and so forth.

Q. What signatures appear on that exhibit No. 12 that you have in your hand?

A. The signature of J. A. Jackson, a receiving and issue clerk of the Warehouse Department of Roane-Anderson Company, and Mr. Fulghum--I don't know his initials, an employee of AEC.

Q. Was Jackson the checker that you have referred to?

A. Yes.

Q. Was Mr. Fulghum an employee of the Atomic Energy Commission?

A. Yes.

Q. Was he an inspector for them?

A. Yes.

Q. What other documents did you have reference to, besides the tally-in sheet?

A. This is our field document. From this field document we prepare a receiving, inspection and acceptance form.

Q. Do you have a Materials Check Sheet?

A. Only in the instances of a packing list where it is not possible to take one of these forms out of the Warehouse, where we would happen to have dirty material, we would have a work sheet on a columnar pad. It is not a pre-numbered document.

[fol. 275] Q. Proceed with your explanation of Receiving, Inspection and Acceptance Report.

A. I gave the REC number of this document as 6. It should be rec.-8.

Q. Do you mean the tally-in?

A. Yes. The Receiving, Inspection and Acceptance Report document is the final document that we prepare in a typewritten form taken from this tally-in field work sheet which is identical, has the same identical information in it that the field work sheet and the tally-in sheet has.

Q. Now, you have said that Mr. Fulghum was an AEC employee and an inspector for the Commission. Did he or some similar inspector in the employ of the Commission inspect the materials as they came in?

A. No, they got spot checks at their discretion.

Q. Such as they made, they would sign the tally-in sheet along with the Roane-Anderson Company employee?

A. That's correct.

Q. Do you know whether the Atomic Energy Commission has ever made any inspection beyond that spot inspection at the time of the receipt of goods?

A. Yes, they have a continual spot check inspection after the material has been placed within the warehouse.

Q. For what purpose?

A. For determining that the material is properly warehoused, properly issued, and that it goes to the proper location.

Q. Does that inspection after warehousing relate entirely to the handling and disposition of the goods after receipt?

A. Yes, I believe so.

Q. Has there been any change in the practice of the Atomic Energy Commission with respect to spot-checking goods at the time of receipt?

A. Within the last few weeks they have discontinued their checker at our warehouse.

Q. What does that mean, that they rely only upon the inspection by Roane-Anderson Company?

A. I assume so.

Q. The Atomic Energy Commission still has the right to make such a check.

A. Yes.

Q. Now, Mr. Holland, when these goods are moved from the receiving platform where are they placed?

A. They are placed in various warehouses within this area of Oak Ridge for proper storage, to be held until such time as they are issued for use.

Q. Now, the description of the receiving procedure that you have given us informed us as to what has happened since you have been occupying your present position with Roane-Anderson Company?

A. Yes.

Q. And the only variation in that procedure has been the

recent termination of inspection at point of receipt by the Atomic Energy Commission?

A. That's right.

Q. So far as you know, the practice as you have described [fol. 277] it, with that change, will continue to be followed?

A. That's correct.

Q. Is that procedure the same, regardless of the source of the shipment, as to whether it is within Tennessee or without Tennessee?

A. Yes.

Cross-examination.

By Mr. Humphreys:

Q. Mr. Holland, Article IX, paragraph 1 of the contract between the Roane-Anderson Company and the Atomic Energy Commission provides that title to all materials, tools, machinery, equipment and supplies which the contractor purchases in accordance with Article I of this contract and for which the contractor shall be entitled to reimbursement under Article V shall vest in the Government at such point or points as the Contracting Officer may designate in writing. To your knowledge has there been any designation in writing where that title passes?

A. No.

Q. And it provides further "That the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that upon such final inspection the contractor (that's the Roane-Anderson Company) shall be given written notice of acceptance or rejection as the case may be." Is written notice of the acceptance of those materials and supplies made and given to the [fol. 278] contractor by the Atomic Energy Commission?

A. Not to my knowledge.

Redirect examination.

By Mr. Fowler:

Q. Mr. Holland, I call your attention to Exhibit 12, which is the tally-in sheet. I also call your attention to Exhibits 13 and 14 which are Materials Check Sheet and Receiving,

Inspection and Acceptance Report. Are those the only documents that you know of which might amount to a written document or signed document on behalf of the Atomic Energy Commission relating to the acceptance of goods?

A. This typed document is the only thing I would know anything about within the three papers, Exhibits 12, 13 and 14 having the signature of J. P. Fulghum.

Q. Who was an employee of the Atomic Energy Commission; is that correct?

A. Yes.

Q. Beyond those documents you don't know of any writings given by the Atomic Energy Commission relative either to acceptance or rejection of goods?

A. As I said before, not to my knowledge that I can recall. These are the only documents that I would have anything to do with.

And further deponent saith not.

Noble J. Holland, By — — —, Court Reporter.

Sworn to before me 13 December, 1948. — — —,
Notary Public. My commission expires — — —

[fol. 279] Deposition of Dwight A. Smith Filed July 1, 1949

The next witness, DWIGHT A. SMITH, being first duly sworn, deposed as follows:

Direct-examination.

By Mr. Fowler:

Q. Give your full name, age, address and occupation.

A. Dwight A. Smith, 37 years old, my address is 113 West Magnolia Lane, Oak Ridge. Accountable Property Agent.

Q. Who is your manager?

A. Mr. Trent, Director of Supplies AEC.

Q. You are employed by the Atomic Energy Commission?

A. Yes.

Q. How long have you held the position of Accountable Property Agent?

A. Two years, a little better than two years.

Q. That will take us back to the latter part of the year, 1946?

A. Yes.

Q. What are your duties in that position?

A. Responsibility to see that the contractor maintains accountability of all property received by him and in his possession.

Q. Are you familiar with the procedure and practices followed in the receipt of goods by Roane-Anderson Company?

A. Yes.

[fol. 280] Q. It seems, Mr. Smith, that Article IX of the contract between Roane-Anderson Company and the Atomic Energy Commission provides that title to goods ordered by Roane-Anderson Company shall pass to the United States at point or points designated in writing by the Contracting Officer. What has been the practice under that provision of the contract?

A. The Government always maintains title to the property. The contractor itself never has title to the property. It always belongs to the Government.

Q. Have you ever seen or come into contact in the discharge of your duties with any written designation by the Contracting Officer of a point at which title to any goods should pass to the United States Government?

A. Not in this particular Roane-Anderson Account. In the case of another contractor on the area it would be true.

Q. What contractor was that?

A. E. I. DuPont de Nemours Company back in 1944.

Q. That was back in 1944?

A. Yes.

Q. Three years before the Sales Tax Act was passed?

A. Yes.

Q. Is it true then, so far as your experience and observation goes, that there has never been any action taken by the Contracting Officer under that provision of the contract I have referred to by way of designating in writing a point at which title should pass to the United States Government?

[fol. 281] A. I would not be familiar with that phase of it.

Q. Have you ever heard of any such designation?

A. No.

Q. Have you ever heard of any such designation orally, not in writing?

A. No.

Q. How many receiving points does Roane-Anderson have?

A. They maintain two receiving stations.

Q. Where are they?

A. C-1 Warehouse and Division 5.

Q. What is Division 5, is that a warehouse too?

A. Division 5 is the maintenance of equipment shop that was taken over last August by Roane-Anderson Company for repair of materials on the area.

Q. Do you follow the same receiving procedure at both points?

A. Yes.

Q. Article IX of this contract also reserves to the Contracting Officer the right in writing to accept or reject goods. What has been the practice in respect to acceptance and rejection?

A. The Contracting Officer or the representative is stationed at the various receiving points for the purpose of making independent check to determine that the type of property that was being received by the contractor was the property for which the Government had paid out its money. For example, if the Government ordered aluminum buckets that they did not get but got zinc buckets, he prepared a quality and quantity check, and prepared an independent [fol. 282] Receiving Report which was forwarded. It is just another type of Receiving Report. It was forwarded to the cost section of AEC and held in suspension until the contractor's receipt was prepared so that a comparison could be made between what the contractor received and what the Government received in order that a comparison be made between the two.

Q. When would the information come through from the contractor?

A. It is quite possible that it would be some time before it would get completely through, but immediately this check was forwarded to the cost section.

Q. And that check sheet would be signed by the representative of the Atomic Energy Commission?

A. Yes.

Q. Was that procedure followed in each instance?

A. Well, yes, this representative only performed these checks on a percentage basis. We had 20 or 25 various checkers, and one Government representative could get only his proportionate part of it.

Q. Was that what they call a selective or spot check?

A. Yes, it was more or less a selective or spot check. My officer also performed various types of spot checks in addition to the one representative stationed there all of the time.

Q. Now, I hand you Exhibit 14 filed in this case, which is Receiving, Inspection and Acceptance Report and you will notice that over the signature at the bottom, which is the [fol. 283] signature of J. P. Fulghum whom I understand to be an employee of the Atomic Energy Commission, that the following appears:

"Approved in accordance with the requirements of the Administration Audit Manual."

I also hand you an exhibit filed in the case, being a copy of paragraph 202.3 of that Manual and ask you if that is the part of that Manual that is referred to over that signature?

A. Yes.

Q. Mr. Smith, have the provisions of that paragraph 202.3 been uniformly observed by the Atomic Energy Commission?

A. To my knowledge, in all cases.

Q. Has the Contracting Officer under the Atomic Energy Commission required any inspections other than the inspection contemplated by that section?

A. Yes.

Q. What kind of inspections and for what purpose?

A. My duties were defined in Audit Manual TM-14-910, which was a Property Accounting Manual for cost plus a fixed fee for prime contractors, and in there it defines several types of checks that the Accountable Property Agent is required to make to determine that the Contractor's method of receiving, storing and issuing of property is adequate. They are defined as quality checks, quantity checks and the checking of issue slips prepared by the contractor to show that they are properly signed and that due credit is taken for property disbursed.

[fol. 284] Q. Is the purpose of those supplementary checks to determine the status, condition and handling of property considered by the Government to be its property?

A. In all cases it is to be its property. These accounts, I might say, were marked the accounts of Dwight A. Smith,

Accountable Property Agent maintained by the contractor. Each stock record card is so marked.

Q. What is the attitude of your office with reference to who owns these purchases from the time of receipt?

A. We have never had any thought in mind but what it is Government property. There has been no question but that it is Government property in the possession of a contractor who was responsible for the property in the furtherance of his contract.

Q. Now, the practice and procedure as you have described them, are they the same regardless of whether the goods are shipped from outside of Tennessee into Oak Ridge or shipped from inside of Tennessee into Oak Ridge?

A. They are the same. They are all consigned to the United States Atomic Energy Commission for Roane-Anderson Company or the other contractors. There are some cases where incorrect billing is sometimes shown on documents but that is more or less a mistake by the vendors because the purchase orders are written U. S. Atomic Energy Commission for Roane-Anderson Company.

Q. Recently, has the Atomic Energy Commission abandoned its inspection at the time of receipt?

A. I am not sure of that in all cases. In most cases, they have.

[fol. 285] Q. Have they come to rely upon the inspection made by the contractor?

A. Yes.

Cross-examination.

By Mr. Humphreys:

Q. This same Article IX referred to in your direct examination contains the further provision that upon final inspection the contractor shall be given written notice of acceptance or rejection, as the case may be. As matter of fact, is there ever any written notice of acceptance of the goods made?

A. The Receiving Report is to be the written notice of acceptance and if there is an exception to any shipment, this paragraph here is supposed to refer to a separate document which will show any damage, shortage or conditions not acceptable.

Q. Other than the execution of that instrument to which you have referred which is Exhibit 14, and other related

documents which are Exhibits 12 and 13, there are no other written notices of acceptance made by the Contracting Officer to the contractors; is that true?

A. I don't believe that I exactly understood that. I am sorry.

Q. Other than those documents there which are Exhibits 12, 13, and 14, there are no written notices of acceptance or rejection?

A. This to my knowledge is a standard acceptance in which the Contracting Officer is notified of the acceptance of the shipment.

[fol. 286] Q. I believe you say that that written acceptance, if that is what it amounts to, is only executed in possibly some ten per cent of the instances of purchase?

A. This particular document here, which is a receipt, is in all cases regardless of the type of shipment. The check sheet attached to the 1034 Form is only on a percentage basis.

Q. Is the concurrence of the Contracting Officer's representative in this particular case, Mr. Fulghum, in that sheet, was the inspection gotten in every instance or is it just some percentage of cases?

A. He did not check all of the shipments he signed but he more likely discussed or reviewed those things more or less.

Q. But he does sign all of them?

A. Yes, he signs them all. There is only one checker.

Q. Let me understand you, now. Do you say that the purpose of his signing is to designate the acceptance by the Contracting Officer of those materials as being materials of the U. S. Atomic Energy Commission?

A. No, I could not make that statement. He only signs that the conditions outlined in this particular Manual are met.

Q. He does not sign it for the purpose of indicating transfer of title?

A. Only indirectly.

Redirect examination.

By Mr. Fowler:

Q. Do you have some further statement to make?

[fol. 287] A. Yes, the Contracting Officer has to satisfy himself that the contractor's method of receiving is ade-

quate, and this independent check made is to notify the Contracting Officer of any change in any way.

Q. Any discrepancy?

A. Any discrepancy or any haphazard method of receiving or handling material.

Q. So far as you know, the Contracting Officer has never required any other method of handling receipts different from the one you have described here?

A. That's right, other than in other contracts there have been other individuals designated. In other contracts I have two or three fellows to do this particular thing. The reason for that is the Manual says his duties in both cases are accountable to the Property Agent, the duties performed by this checker here.

Q. But even in those cases where somebody out of your office does it, and you were talking about other contracts than the Roane-Anderson Company, the receiving procedure is the same?

A. Yes.

Re-cross-examination.

By Mr. Humphreys:

Q. But in those other cases, is the purpose of the inspection and the signing of the sheet for the purpose of indicating a transfer of title or for the purpose of showing that the contractor has complied with the Manual requirement as to handling of property?

[fol. 288] A. In the case of representatives from my office they were performing checks which were in accordance with the 910 Manual.

Q. But not to indicate transfer of title?

A. No. We never considered any property in the possession of Roane-Anderson Company other than Government property. To my knowledge, they do not have an item of personal property.

Re-direct examination.

By Mr. Fowler:

Q. The question of transfer of title never occurred to your mind?

A. As far as we are concerned, we were always agreed on that one point.

Re-cross-examination.

By Mr. Humphreys:

Q. You are familiar with Article IX in the contract, are you not, or were you?

A. I have read it several times.

Q. And you are aware that it provides that upon final inspection the contractor shall be given notice of the acceptance or rejection, that is in regard to the title to property, that is the acceptance by the Contracting Officer. Do you say that there has been no practice established relative to that and none has existed since the beginning of this?

A. This is the written notice of acceptance?

Q. That is in regard to quality and quantity?

A. In Receiving Reports, all Receiving Reports were prepared every time shipment was received by Roane-Anderson Company, and this fellow signing each one under the conditions as outlined in this particular Audit Manual. The contractor is the Receiving Agent of the Government [fol. 289] ment.

Q. In your contemplation, the contractor is authorized as Receiving Agent to indicate his acceptance, not only on his behalf but on behalf of the United States Government?

A. He is the one—

Q. That's what you have just said?

A. Yes, I think that's right.

Q. Where is there any authority written or otherwise for that conclusion?

A. I would say that it is more or less a carry-over from other previous contractors on the area, and that it was deemed adequate in that this was written notice by the contractor to the Contracting Officer.

Q. Do you have any written designation by the Contracting Officer of the contractor as agent for the acceptance of the property and the transfer of title?

A. In all cases to Roane-Anderson Company.

Q. It happens in this case that there isn't any?

A. The reason for that—

Q. I say, it just happens in this case that there isn't any in Roane-Anderson?

A. As far as I enter into the picture. I would not say that there wasn't written notice before my time.

Redirect examination.

By Mr. Fowler:

Q. You remember that this contract expressly designates Roane-Anderson Company as agent of the United States for buying, and receiving and everything else in this work; do you remember that?

A. Yes.

[fol. 290] Re-cross-examination.

By Mr. Humphreys:

Q. What purpose do you serve if they are going to do it all?

A. Probably that is the reason they are fitting us out of the picture, but my job was only for accountability, to see that there was a Receiving Report prepared, that this material shown on the Receiving Report was posted to an account which was the Government's record with a signed issue slip authorized by Roane-Anderson Company people that they sign, taking credit to their account, and all these debits and credits had to be verified by us, and we were held responsible by the Audit Section for any discrepancy that existed.

Q. Were you ever employed in a similar capacity anywhere else before being employed here?

A. Yes.

Q. Whereabouts?

A. Do you mean as far as it pertains to this particular account?

Q. No, as far as pertains to Government possession in relation to property handled by a contractor?

A. I have been here since 1943 and I was at Baltimore before coming here, with the Ordnance Department.

Q. That's the Ordnance Department?

A. Yes.

Q. Where were you stationed?

A. Baltimore.

Q. Who were you employed by then?

A. The Ordnance Department.

Q. Have you ever had the office of Property Accountability under any other contractor?

[fol. 291] A. I have only been an assistant to an Accountable Property Agent for some two years.

Further deponent saith not.

Dwight A. Smith, By A. C. Dore, Court Reporter.

Sworn to before me 13 December, 1948, McNabb,
Notary Public. My commission expires: — —, —.

[fol. 292] Deposition of J. P. Fulghum Filed July 1, 1949.

The next witness, J. P. FULGHUM, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your name, age, address and occupation.

A. J. P. Fulghum. I am 37 and I am at the present time warehouseman or storekeeper and I live at 115 West Hunter Circle, Oak Ridge.

Q. Who is your employer?

A. AEC. Mr. Russell is my supervisor.

Q. How long have you held your present position?

A. About a month and a half, I would say.

Q. What were you doing before you took the present position?

A. I was Materials Inspector.

Q. Who was your employer then?

A. Mr. Charley Williams.

Q. Were you employed by the Atomic Energy Commission?

A. Yes.

Q. When were you employed by the Atomic Energy Commission as Materials Inspector?

A. In August, 1947, I believe.

Q. What were your duties as Materials Inspector?

[fol. 293] A. Inspecting materials as they arrived at Roane-Anderson Company warehouse and along with one of Roane-Anderson Company's Materials Checkers, I checked this material on a spot-check basis, signed Roane-Anderson Company's Receiving Reports, their tally-in Re-

port and also made out a Receiving Report and forwarded it to the Atomic Energy Commission, Audit Section.

Q. I hand you Exhibits 12, 13, and 14 filed in this case and ask you if they bear your signature as a representative of the Atomic Energy Commission?

A. They do.

Q. Are these papers typical of receiving transactions?

A. Yes.

Q. What would you do upon the receipt of goods, Mr. Fulghum?

A. Well, all of the goods, they would come to C-1 Warehouse loaded by truck, and we would take the shipping document, freight bill, as we call it, and check the number of packages, boxes or what have you against the number listed on the freight bill to see if they were all there. I did not sign the freight bill, but Roane-Anderson Company's representative did sign the freight bill. Shipments are placed in the warehouse, and Roane-Anderson Company's checker got their purchase order and any documents concerning the shipment and we opened the shipment, inspected it for quantity and quality and checked it against the purchase order specifications.

Q. Now, these sheets which we have referred to as Exhibits 12, 13, and 14, when were they prepared and signed by you with respect to the time at which the goods came in?

[fol. 294] A. Well, there here are made out by Roane-Anderson Company's Inspector or Materials man.

Q. You are referring to the tally-in sheet?

A. No. 86942. This is my inspection sheet here and it was made out at the same time we checked the material. It was forwarded to the Atomic Energy Commission, Audit Section.

Q. You have just been referring to "Materials Check Sheet"?

A. That's right.

Q. And both the tally-in sheet and Materials Check Sheet were made when the goods were first opened and inspected?

A. That's right.

Q. Then with respect to the Receiving, Inspection and Acceptance Report, what is it?

A. It is a copy of this tally-in sheet that was made out when the goods were received, and this went on into Mr. Tom Mee's office and was typewritten out.

Q. It is just putting the same thing in more formal style?

A. Yes, you have to have so many more copies of this for different offices.

Q. Has there been any change in this inspection procedure of the Atomic Energy Commission?

A. I have been transferred from there down to the Surplus Property Division and to the best of my knowledge there is no one down there doing this inspection at the present time.

Q. The contractor, Roane-Anderson Company's inspectors are still on the job?

A. As far as I know, yes.

Q. When was the Government label or brand put on these [fol. 295] things after they came in?

A. Well, they were put on them right at the time they were opened, the Property Section notified and they came up and stenciled them, and painted the number on them.

Q. Did they put "U. S.-RA" on them?

A. Yes, on some they put "U. S. RA" and put a number on there.

Q. This procedure that you have described, is that followed regardless of whether the goods come in from outside of Tennessee or some other point within Tennessee?

A. As far as I know, it did not matter where they came from.

Q. And so far as you know, the procedures you have described have been followed uniformly?

A. Yes.

Q. And will continue to be followed uniformly except that the Atomic Energy Commission apparently is not making any spot checks any more?

A. That's right.

Cross-examination.

By Mr. Humphreys:

Q. Now this contract between Roane-Anderson Company and the Atomic Energy Commission contains an Article IX. Are you familiar with that Article IX?

A. No, I am not.

Q. Article IX reads:

"Title to all materials, tools, machinery, equipment and supplies which the contractor purchases in accordance with Article I of this contract and

for which the contractor shall be entitled to reimbursement under Article V, shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment, and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further, that upon such final inspection, the contractor shall be given written notice of acceptance or rejection as the case may be."

Since you do not even know of the existence of that Article, I take it you don't understand that your duties were in relation to the Article?

A. I understand my duties. Mr. Williams took me down and showed me what to do, told me the reports to make out, described how he wanted the check done on the materials that came in, and any discrepancies that I noted were reported to Williams.

Q. A quantity and quality check?

A. And damage, or what have you.

And further deponent saith not.

J. P. Fulghum, by A. C. Dore, Court Reporter.

Sworn to before me 13 December, 1948. McNabb,
Notary Public. My commission expires:—

[fol. 297] Deposition of Louis M. Groeniger Filed July 1, 1949. In the Above Styled Causes Was Resumed at Oak Ridge, Tennessee on April 4, 1949 at 10 o'Clock A. M., and Continued by the Taking of the Depositions of Louis M. Groeniger, R. J. Rochstroh, Samuel R. Sapirie

These further depositions are taken under the same agreement as stated at the time of the taking of the first depositions beginning December 13, 1948.

Solicitor for the defendant waives the disqualification of A. C. Dore, Court Reporter to swear the witnesses, such disqualification arising because Mr. Dore is a notary public for Knox County, Tennessee and not for Anderson County, Tennessee, and it is agreed that Mr. Dore may

swear the witnesses, sign their names hereto and in all respects serve as if a notary public for Anderson County, Tennessee.

LOUIS M. GROENIGER, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age and address.

A. Louis M. Groeniger, 118 Meadow Road, Oak Ridge, Tennessee; 37.

Q. What is your occupation?

A. Chief of the Industrial Personnel Branch of the Oak Ridge operations, Office Division of Organization and Personnel.

[fol. 298] Q. Is that a part of the work of the Atomic Energy Commission?

A. Yes.

Q. You are an employee of the Atomic Energy Commission?

A. Yes.

Q. How long have you held the position stated?

A. Since March 22nd, 1948.

Q. What are the duties of that position?

A. To supervise the work done in a section known as Wage and Salary Administration Section which explores and either approves or disapproves contractors' policies for reimbursement of moneys expended on employees. I mean, specifically, that any expenditure of the contractor which has to do with salaries or wages and any other conditions of employment that affect the employees are part of the purview of this Wage and Salary Administration. Other duties as Chief of the Industrial Personnel Branch has to do with advising the manager of the Oak Ridge operations through my immediate chief, Mr. Jack Curtis, on matters pertaining to labor relations. Another duty is supervision of a Personnel Statistic Branch which is concerned not only with wages and salaries and the statistical side of employment at Oak Ridge but has to do with such things as cost of living. Those three sections come under my branch, wages, labor relations and personnel statistics.

Q. What position did you hold immediately prior to March, 1948?

A. From May 5th, 1947 until March, 1948 I was chief of a section which included the Wage and Salary Administration [fol. 299] and the labor relations. The only difference is I did not have this personnel statistics function.

Q. Prior to May 5th, 1947 what was your occupation?

A. From January 1st, 1946 until May 5th, 1947 I was employed as a civil examiner by the National Labor Relations Board working out of the Tenth Regional Office situated in Atlanta. I had a territory which was comprised of East Tennessee.

Q. Where were your headquarters?

A. My official headquarters were in Atlanta. I spent upwards of twenty days a month in East Tennessee, ranging from Bristol and Kingsport down as far as Oak Ridge.

Q. How much time would you spend on duties relating to Oak Ridge?

A. Well, from about July, 1946 forward, I spent about 50 per cent of my time at Oak Ridge. As a matter of fact, in February, 1946 while I was still employed by the N. L. R. B., I was assigned a house here at Oak Ridge and moved my family here.

Q. You were not an employee of the Manhattan Engineering District at the time of the execution of the contracts filed as exhibits in this case, entered into with Roane-Anderson Company and Carbide & Carbon Chemicals Corporation?

A. No.

Q. I believe that the Atomic Energy Commission assumed jurisdiction over Oak Ridge, January 1st, 1947?

A. That's right; at least, that's my understanding.

Q. And you were not employed by the Atomic Energy Commission until May 5th, 1947?

[fol. 300] A. That's right.

Q. From your actions in discharge of your official duties have you ascertained whether or not the Atomic Energy Commission when it assumed jurisdiction over Oak Ridge, undertook to draw together into one formal statement various provisions that had theretofore been published regulations of labor relations between employees and the contractors?

A. Yes. Under the Manhattan District, the basic contracts such as are exhibits in this matter contain general

clauses stating that the contractor would be reimbursed for moneys expended on employment and everything incident thereto so long as the expenditure was covered by the specific approval of some officer of the Manhattan District. That officer was referred to as the Contracting Officer. During the three or four years of operation the authorizations for reimbursement were in various forms. Some of these forms would be actual reimbursement authorizations based on the decisions of the Wage and Salary Administration Agency of the Government. I believe the correct title was Wage Administration Agency. It might have been Salary Stabilization Agency. Some of the authorizations would be in the form of memoranda of clarification for the contractor from the Contracting Officer or possibly the memoranda would be from some higher up in the Manhattan District than a Contracting Officer. In any event, the Atomic Energy Commission must have recognized that after several years of accumulation of all these various forms of authorization [fol. 301] there was need for a regularized system, and as of January 1st, 1947 each contract then in existence was examined carefully by employees of the Wage Administration Section and a document such as introduced in this evidence, Reimbursement Order No. 1 for Roane-Anderson Company and Carbide & Carbon was the result. This is Reimbursement Order No. 1.

Q. In order to be more specific, I hand you now a mimeograph document styled, "United States Atomic Energy Commission. Reimbursement Order," consisting of 23 pages with six attachments thereto bearing on the 21st page of the Reimbursement Order the signature of Jack Curtis and ask you if this is the Reimbursement Order to which you refer in the case of Carbide & Carbon Chemicals Corporation?

A. Yes, in the upper righthand corner I notice this No. 1.

Q. I next hand you a document similarly styled except that it relates to Roane-Anderson Company rather than Carbide & Carbon Chemicals Corporation and which consists of 32 pages and bearing on the last page the signature of Jack Curtis and ask you if this is the Reimbursement Order in the Roane-Anderson Company case?

A. Yes.

Q. Are those correct copies of the Reimbursement Orders with those contractors?

A. Yes.

Q. I will ask you to file in the Roane-Anderson cases the Reimbursement Order affecting the Roane-Anderson Company as Exhibit No. 27.

A. Yes, I so file it.

Q. I ask you to file that Reimbursement Order affecting [fol. 303] Carbide & Carbon Chemicals Corporation as Exhibit No. 19 in the Carbide & Carbon cases?

A. Yes.

Q. For the convenience of counsel and the Court, would you summarize the general subject matter and indicate the extent of detail of these Reimbursement Orders without going to the extreme of a detailed statement?

A. The Disbursement Orders cover such matters as the salaries or wages paid by the contractors to the employees engaged in the work specified in these contracts. The Reimbursement Orders define the limits by which an employee may receive pay increases. They control the payment for overtime in some cases, the Reimbursement Order will control the amount of overtime which may be worked and in any event they always control the amount of compensation the employee will receive for overtime work. They spell out how much vacation pay the employees may receive. They set forth which holidays the employees may be paid for not working. They define how much absent time an employee may be paid for including absences because of sickness or in some rare cases for personal reasons. They cover reimbursement for subsistence and travel, expenses for moving, expense to employees who are brought to the project for the convenience of the Government; in some cases they provide for the return expenses. When an employee has completed his job, he is sometimes entitled to reimbursement for moving himself and family and household goods back to the point of origin. The Reimbursement Order also controls the expenditure the contractor may make on health and accident insurance, retirement plan, recreation provided for employees, termination pay, and while it is not in either of these two, occasionally on a construction contract there will be spelled out what the craftsman may receive in the way of travel pay.

Q. If in some instance the contractor should fail to comply with this Reimbursement Order, how is the contractor penalized?

A. Well, let's take a concrete example on that. In the Carbide & Carbon Reimbursement Order in attachment No. 3, page 3 of 4, the first classification listed there is a maintenance craft supervisor. It provides that the monthly salary for that man can be anywhere from \$395.00 to \$485.00 per month. If the contractor wishes to pay a certain craft supervisor more than \$485.00, and we did not approve it, he could either pay it out of his own pocket or just pay this maximum, which we would approve the maximum of \$485.00.

Q. In other words, departure from the limits of the Reimbursement Order is at the cost of the contractor himself?

A. That's right. Another more general example would be if he negotiated a contract with a labor union providing for ten cents an hour wage increase and when he presented that to us, we said that there was no justification for the ten cents and that five cents was all he should have negotiated for, he would have had the alternative of going back to the labor union and telling them that five cents was all that he [fol. 304] would give them or by paying the additional five cents out of his own pocket.

Q. The Reimbursement Order in both cases, that is, Roane-Anderson Company and Carbide and Carbon both were prepared under the specific authorization of certain provisions of the contract entered into by the Atomic Energy Commission with those contractors?

A. That's right. That is the general clause I referred to earlier in each definitive document.

Q. Has it been found necessary from time to time to make changes in the Reimbursement Orders?

A. Yes.

Q. About how many such changes have been made?

A. I think there are a little more than fifty supplementary Reimbursement Orders in the Carbide & Carbon contract and a few less than fifty in the Roane-Anderson contract.

Q. Have those changes affected the general structure and scope of the original Reimbursement Order filed as an exhibit here?

A. No.

Q. Of what then is the nature of the changes?

A. Well, in the Roane-Anderson Company pay structure for its maintenance employees was there effected by a union negotiation which was concluded shortly after the first of the year, 1947. This document R. O. 1 provided that a

plumber as of January 1st, 1947 could be reimbursed for \$1.44 an hour. If memory does not fail me, in late January, [fol. 305] 1947 Roane-Anderson Company and the Knoxville Building Trades Council reached an agreement which provided that that plumber should receive \$1.54 per hour. Most of the rates shown on pages 29, 30, 31 and 32 of R.O. 1 in the case of Roane-Anderson were effected by that negotiation, so we see it when the contractor presented a request for change in the Reimbursement Order, I believe, No. 3, 2 or 3, revising the rate. From time to time there have been other revisions, but there has been no revision in the policy, procedure and methods of handling this.

Q. There has never been any abdication by the Atomic Energy Commission of the power to impose these rates upon the contractor?

A. No, there is a modification of the Roane-Anderson Company contract which I might quote to demonstrate that. The Roane-Anderson Company contract was modified by Modification No. 14 on the 27th of June, 1947 and this modification became effective July 1st, 1947. Article XXX of that modification says in part:

"Any amount paid or allowance made by the contractor to any employee in excess of regulations governing the hours of work and pay, job classifications and employee policy so approved or ratified by the Contracting Officer shall be at the expense of the contractor under any pay reimbursement by the Government unless and until the Contracting Officer has so approved and ratified in writing."

In the same Article XXX of the modification there is further demonstration, which I don't believe it is necessary to quote.

[fol. 306]. Q. The contract at one point authorizes the Atomic Energy Commission to direct the contractor to discharge any pay employees that the Commission decides ought to be fired. Has the Atomic Energy Commission ever exercised that power?

A. Yes.

Q. In more than one instance?

A. I know of only two cases. I think there has been more persons released by the contractor at the Commission's indication rather than order but I know of two instances where it was ordered.

Q. In other words there has been actual instances of the exercise of that power by the Commission?

A. Yes.

Q. Mr. Groeniger, with respect to the higher salaried employees of the contractor, whom we may refer to as key personnel, does the Atomic Energy Commission have and exercise power with respect to the amounts of their salary and otherwise?

A. Yes, not only the amount of the salaries, but the Commission has the authority to exercise judgment as to whether or not the employee is qualified. Now, that is stated differently in different contracts, and for example, I think in the Carbide & Carbon document it says the Commission must have prior review of the qualifications and it names such qualifications of key personnel.

Q. And furthermore says their principal assistants?

A. In the matter of salaries no contractor can hire anyone in excess of \$8,000.00 per year without Commission approval.

[fol. 307] Q. Can we indicate what basic factors made it necessary for the Atomic Energy Commission to retain this particular control over the employment and work and compensation of personnel of a contractor?

A. The Atomic Energy Commission is an arm of the Executive Branch of the Federal Government and it does not have the authority to delegate its responsibility for the expenditure of the taxpayer's dollar.

Q. So it has to be careful in these cost-plus situations?

A. Yes.

Q. Is there also some elements of maintenance of secrecy and to employ only reliable personnel at this particular place here?

A. Oh, yes.

Q. Have you regarded that as perhaps one of the important reasons contributing to this personnel policy?

A. No. My answer is along a fiscal and financial line rather than the security of information and the desirability of the employee as a loyal American. My answer is based on the responsibility to the taxpayer through the Congress. I don't know of anything in the Atomic Energy Act or any other Act of Congress which could permit a government agency to tell a contractor to pay whatever wages it likes to meet different kinds of situations and that it will reimburse him later for it.

[fol. 308] Cross-examination.

By Mr. Humphreys:

Q. It is customary, as I understand it, in a cost-plus-a-fixed-fee contract to fix limits of maximum liability of the employing government agency for the employment policies of the contractor. That's true, isn't it?

A. To the best of my knowledge.

Q. What you are testifying in regard to here is in substance that representing the government agency you have established through these documents that you have filed the maximum limits of Government liability for employment policies of the contractors, and these represent the maximum limits except as they have been modified by modification orders referred to; is that true?

A. That is true. That suggest this to me: I believe there is a provision in the contract—I know there is—that if the contractor said, "Well, we can afford to pay more than this and we are going to do it," and the contractor consistently persisted in that we could cancel the contract.

Q. But, after all, his employment—subject to the extent that it is necessary to maintain a personnel that is not subversive and is loyal—his employment policies are under his own control except as regards maximum limits of liability which are fixed in these orders.

A. As far as reimbursability, it is, yes.

Q. And that is what you are testifying in regard to?

A. Yes.

Re-direct examination.

By Mr. Fowler:

[fol. 309] Q. Did the contents of these Reimbursement Orders originate with the contractors or with the Atomic Energy Commission or before that with the Manhattan District?

A. Both.

Q. Will you explain?

A. Yes. It is the Commission's policy, internal policy, that insofar as a contractor has home office policies which he has utilized in his private operations, we will approve those unless and until they upset something at Oak Ridge. For example, as I understand this history of employment

policies at Oak Ridge, certain Carbide & Carbon policies that they had practiced in private operations would probably not have been feasible here. The Manhattan District, therefore—I don't know whether they expressly disapproved or tacitly disapproved those policies—maybe Carbide & Carbon never requested that they be put into effect. Other policies would just have no application.

Q. To the extent that the Atomic Energy Commission found and finds contractor policies unobjectionable, the Commission adopts them as its own and embodies them in Reimbursement Orders?

A. Yes, except that that is not known as the Atomic Energy Commission's own policies. It is policies which the contractor is allowed to use in the exercise of the particular contract. But it does not become the policy of the Atomic Energy Commission. If I might add this, I might have gone a step further in replying to your question about maximum liability. In certain phases, for example, on a construction [fol. 310] contract, by law there is a minimum which the contractor must follow. That is provided for in the Davis-Bacon Act.

Mr. Humphreys: That is an Act of Congress?

The Witness: Yes.

Q. By saying that the Commission adopted these policies as its own are simply meant that where unobjectionable, the Commission would put in effect by its Disbursement Order the policies suggested by the contractor?

A. That's right.

Re-cross-examination.

By Mr. Humphreys:

Q. Actually, the sum and substance of the whole matter is that you reimbursed the contractor for his expenditures under these policies which you permit him to adopt. That's the sum and substance of the matter?

A. Yes.

Q. That gets it down to the point?

A. Yes.

Q. You reimburse him to the maximum limit you have indicated?

A. Yes.

Q. But he adopts the policies and you reimburse him unless you disapprove the policy as calling for the expenditure of more money than you feel he should be authorized to expend. That, in substance, without being specific, would be correct?

A. Except that I would like to retain that one point, that [fol. 311] he may have a policy which he wants. As a matter of fact, I have written two letters last week refusing to approve policies which he has contended and demonstrated our policies he practices elsewhere.

Q. But they don't fit in here and so they are not allowed?

A. That's right.

And further deponent saith not.

Louis M. Groeniger, By A. C. Dore, Court Reporter.

Sworn to before me this April 4, 1949. A. C. Dore,
Notary Public. My commission expires: 4-14-52.
(Seal.)

Deposition of Samuel R. Sapirie Filed July 1, 1949

The next witness, SAMUEL R. SAPIRIE, being first duly sworn, deposed as follows on:

Direct-examination.

By Mr. Fowler:

Q. State your name, age and address.

A. Age 39, 100 Ogden Circle, Oak Ridge.

Q. What is your occupation?

A. I am engineer with the Atomic Energy Commission.

Q. What position do you hold with the Atomic Energy Commission?

[fol. 312] A. I am Director of Production and Engineering for Oak Ridge operations.

Q. How long have you held that position?

A. I have held that position since February 1st, 1947.

Q. What are the duties of that position?

A. I am responsible for developing, recommending and directing procurements for production and process improvement of the electro-magnetic and gaseous diffusions separation plants, engineering and construction related to pro-

duction and research procurements, and accountability of source and fissionable materials, developing and currently maintaining plans for mobilization, supplying natural gas and electric power, communications service, off-area facilities not otherwise assigned, and for providing staff assistants on similar matters pertaining to the Dayton Area.

Q. Mr. Sapirie, first I want to ask you about who buys and pays for the services of the utilities to the contractors?

A. I might list those individually. The electric power service is purchased by the Atomic Energy Commission under a prime contract between the Commission and the Tennessee Valley Authority. The telephone services are purchased by the Commission under a prime contract with Southern Bell Telephone & Telegraph Company. The water is supplied with the use of Government-owned facilities that have been constructed on the area and are now operated by various contractors under cost-plus-a-fixed-fee-type contract. The Roane-Anderson Company operates the main water system which supplies the City of Oak Ridge, and [fol. 313] electro-magnetic plant, and the Oak Ridge National Laboratory. The Carbide & Carbon Chemicals Corporation operates the water system that supplies the gaseous diffusion plant. The Roane-Anderson Company also operates the two sewage systems that provide for sewage disposal for the Town of Oak Ridge. The Carbide & Carbon Chemicals Corporation operates the sewage disposal plant at the three plants.

Q. Has the Atomic Energy Commission entered into a contract looking to the supplying of natural gas to one or more of the plants at Oak Ridge?

A. Yes, the Atomic Energy Commission has entered into a prime government contract with the East Tennessee Natural Gas Company for the supplying of natural gas to serve the production plants and possibly the City of Oak Ridge. The Gas Company is at present applying for a Certificate of Convenience and Necessity from the Federal Power Commission, after which they will initiate construction of the pipeline from a point on the T. G. T. line near Smithville, Tennessee to Oak Ridge with use of steel pipe that is being made available under the steel industries' voluntary allocation plan. The gas will then be supplied to the Oak Ridge area for the use of the three plants and possibly the city.

Q. Leaving the general subject of the services furnished

by utilities, in the case of some supplies used by these contractors, does the Government through the Atomic Energy Commission buy them itself and turn them over to the contractors?

A. There are some supplies such as nitrogen, helium and certain coded chemicals that are purchased by the Government [fol. 314] under Government purchase orders for delivery to the plants for use in the plant operation.

Q. How about automotive equipment?

A. Automotive equipment and office equipment is purchased by the Government for use by the operating contractor.

Q. Is the distribution of steel still subject to some allocation by somebody?

A. The Steel Industries Committee is cooperating with certain Government agencies under a voluntary steel allocation system whereby they make certain quotas of steel available for use during different quarters of the year. The Atomic Energy Commission is participating in the voluntary plan and thereby secures steel allocation that is then used by the various operating contractors for construction and operation under cost-plus-a-fixed-fee-type contracts.

Q. Now, Mr. Sapirie, going to the subject of source and fissionable material, which was referred to in the Atomic Energy Act, I want to ask you to tell us or describe to us the extent of supervision by the Atomic Energy Commission over the contractors who deal with these materials?

A. Well, in the first place, I might say that title to the source and fissionable materials remains with the Atomic Energy Commission. The materials are made available to the various contractors by the Commission and are carefully accounted for and controlled with use of a system of receipts, inventory and survey. The Commission uses complicated statistical analysis method to analyze the discrepancies in order to ensure against diversion of the source [fol. 315] and fissionable material. The analyses and protective measures used by the contractors are under surveillance of Commission representatives periodically and surveys of the security and accountability procedures employed by the contractors are made in accordance with well-defined Commission policy.

Q. I hand you a bulletin apparently published by the Atomic Energy Commission and ask you to tell me what that is?

A. This is bulletin G. M. 95 and summarizes the Atomic Energy Commission's policy that is followed in the accounting for source and fissionable material. Its policy is defined in Washington, is transmitted to the five field offices of operation, of which Oak Ridge is one, where it is then disseminated to the field offices under Oak Ridge, with implementation in an Oak Ridge bulletin No. 96.

Q. Will you file Bulletin G. M. 95 as Exhibit No. 20 in the Carbide & Carbon Chemicals Corporation cases and also file Bulletin O. R. 96 as Exhibit No. 21 in the Carbide & Carbon cases.

A. Yes, I so file them.

Mr. Fowler: I state now that these bulletins are not filed in the Roane-Anderson Company cases because Roane-Anderson does not have a direct relation to the handling of source and fissionable materials.

Q. Had you completed your statement with respect to these two exhibits?

[fol. 316] A. I might add briefly that G. M. 95 contains a copy of the shipping document that is used in transferring source and fissionable material between contractors and the Atomic Energy Commission's Offices.

Q. What page is that one?

A. That is Exhibit 2 at the back of the bulletin.

Q. Next to the last page?

A. Next to the last page. In the back of that form it illustrates the routing of the various copies of the S. F. shipping form. You will note that each form has copies that go to each Atomic Energy Commission office, involved in the shipment, both the shipper and the receiver, and regardless of what action is taken by the contractor in shipping source and fissionable material, you will find that the action of shipment is directed by the Atomic Energy Commission and then the completed shipping forms are filed in the Atomic Energy Commission offices that have responsibility for receiving.

Q. When you speak of S. F. materials, you are referring to source and fissionable material?

A. That is right. Source material is material that contains normal uranium. Fissionable material is enhanced in the uranium 235 isotope of plutonium.

Q. Does the Atomic Energy Commission exercise any supervision during the processing of these materials?

A. Yes, the actual operations are carried on by the cost-plus-fixed-fee operating contractors. However, they carry on the operations in accordance with specific policies and [fol. 317] schedules and specifications established by the Commission, and in accordance with budgets that are approved by the Commission with use of funds allocated and authorized by Congress. The Atomic Energy Commission operations offices has a production division under my office that is a plant operating groups, that extends the charges, approving their time, inspecting the work being done by the operating contractor and checking and analyzing all operating reports prepared by such contractor.

Cross-examination.

By Mr. Humphreys:

Q. After the purchase of the utilities services, electricity and water, by the Atomic Energy Commission on prime contracts on what basis are these utilities furnished to the prime contractors, who are operating the plant here?

A. They are furnished to the plant operators under an arrangement whereby the Electric Power branch under the Engineering Division takes the responsibility for checking and billing from Tennessee Valley Authority and the allocation of the use of power under such billing to the various operations for cost purposes. However, there is no exchange of funds between the various contractors and the Commission for the power so furnished. We have a telemetering system that summarizes the total usage in the area, which is the basis for a single bill that is presented by Tennessee Valley Authority to the Commission and paid by a single check. The budgeting for the Tennessee Valley Authority account is handled under my offices and the operating contractors have no participation in the actual funding of the power bill. They are advised, however, of the [fol. 318] value of the power furnished to them so that their records of the cost of production or the cost of operating the town are realistic and include all values.

Q. As a matter of fact, there has been and there is but one major source of electric energy in this whole area and that is the Tennessee Valley Authority?

A. With one exception. We have at K-25 a generating station of our own that produces a particular type of power for our operations.

Q. Who operates that?

A. That is operated by Carbide & Carbon Chemicals Corporation in accordance with operating procedures that have been developed and approved by the Commission on an entirely reimbursable basis.

Q. I believe that is a very large plant and it has an enormous capacity for the creation of electric energy?

A. This plant has an installed capacity of approximately two-thirds of that capacity.

Q. Now, you spoke of direct purchases by the Government of coded chemicals and steel?

A. I did not mention steel. I included nitrogen, helium, and certain other products.

Q. I believe that this purchase by the Government of these particularly-mentioned items is made necessary by the fact that they are controlled; isn't that true?

A. No, not entirely. We sometimes make purchases for the contractors when we can buy a little cheaper than they can. There are some firms that will give the Government [fol. 319] 15, 20 or 25 percent discount that object to giving it to our contractors direct, in which cases we then have to write to the contractors and write to the manufacturers and explain the type of arrangement we have, in which case they give our operating contractors the same discount that they give us.

Q. Now, when you buy those supplies direct, that is, when the United States or the Atomic Energy Commission buy them direct, there is no sales or use tax paid on those purchases by the Atomic Energy Commission, is there, or do you know?

A. I don't know.

Mr. Fowler: It is our information that in no case of direct purchase of materials or equipment or property by the United States Government or the Atomic Energy Commission is any sales or use tax paid to the State of Tennessee.

The witness: I might quote for you the type of answer we give various companies who sometimes question the granting to one of our contractors of the same discount they give the Government.

Q. I appreciate your offer, but I don't think it is necessary.

Redirect examination.

By Mr. Fowler:

Q. There is just one simple matter which I want to clear up. I understand that there is some change currently being [fol. 320] made in the method of handling the telephone service, that is, whereas heretofore the Atomic Energy Commission has paid the Southern Bell Telephone Company directly for all services rendered, that some change is contemplated whereby the contractor will pay directly for a part of the service?

A. That is in accordance with a policy that applies to all of our operations of trying to assign to the operating contractors all operating functions. Now we are endeavoring to transfer to our operating contractors the operation of the telephones which were facilities of the area. In accomplishing that, we find that we might be able to secure better service and somewhat more economically by having most of the cost-plus-fixed-fee contractors enter into independent arrangements with Southern Bell Telephone Company for their own services. The contractors operating under the Office of Community Affairs will probably enter into their own negotiations with Southern Bell Telephone & Telegraph Company. The plant operating contractors, that is, Carbide & Carbon Chemicals Corporation will probably continue to take service from Southern Bell Telephone & Telegraph Company jointly with the Atomic Energy Commission, but will probably take over the operation of the switchboard which we now operate.

Recross-examination.

By Mr. Humphreys:

Q. I take it that the situation is, summarizing briefly, from what you say along this line, that when the Atomic [fol. 321] Energy Commission took over from the United States Army Engineers, it found a situation where the United States Army Engineers were engaged in a number of operations that could be handled by contractors, and in keeping with the Atomic Energy Commission's policy of having all of the operations handled by contractors as much as this can be done in keeping with the situation, you are turning over those services to the contractors?

A. That's right. That is reflected by the large reduction in the number of direct Government employees at Oak Ridge. We now have approximately 60 per cent of the number of people we had at the time the Commission took over.

Q. Is it the policy and the purpose of the Commission to ultimately have all of the services discharged by contractors except as regards the policy of maintaining a surveillance for preservation of secrecy?

A. Not quite. The policy is to turn over to the operating contractors practically all of the direct operations. We do retain all policy-making and control functions. We retain certain of the security functions that you mentioned, such as shipment security and the patrol of the area as a whole. We retain control over source and fissionable material. We retain budgetary control and we retain overall direction and administrative control. At the present time, we have also some other direct operations which we hope to get out of ultimately. We are still operating the communications, including both telephone and teletype. We will probably always have to retain a part of the teletype operations, [fol. 322] which includes a cryptographic system for the transmittal of classified messages. We are now doing some work on the disposal of excess and su-plus Government-owned materials that have accumulated during the construction and operating program which we hope ultimately to turn over to the operating contractor as soon as some of the details can be worked out.

And further deponent saith not.

Samuel R. Sapiric, by A. C. Dore, Court Reporter.

Sworn to before me this 4 April, 1949. A. C. Dore,
Notary Public. My commission expires 4-14-52.
(Seal.)

[fol. 323], Deposition of R. J. Rochstroh, Filed July 1, 1949

The witness, R. J. ROCHSTROH, being duly sworn, deposed as follows:

By Mr. Fowler:

Q. Give your full name?

A. R. J. Rochstroh.

Q. Mr. Rochstroh, state your age and address.

A. 57, address Room 146 Cambridge Hall, Oak Ridge, Tennessee.

Q. What is your occupation?

A. Traffic manager of the United States Atomic Energy Commission, Oak Ridge.

Q. What are the duties of your position?

A. Handling all matters pertaining to freight and passenger and air travel and all motor freight and express shipments.

Q. How long have you held that position?

A. From December 1st, 1942.

Q. I take it, then, you were in the employ of the Manhattan District?

A. Yes.

Q. Before the Atomic Energy Commission took over?

A. Yes, in the Corps of Engineers.

Q. The principal thing I want to ask you about, Mr. Rochstroh, concerns the use of the Government bill of lading in transporting purchases to Oak Ridge, particularly purchases made by contractors at Oak Ridge. Can you tell [fol. 324] us in brief whether or not such shipments have been made on Government bills of lading and if the practice was terminated here?

A. Shipments were made from the vendors on Government bills of lading off and on. Sometimes, we would furnish a Government bill of lading with the purchase order. We discontinued that for the reason that so many of the original documents would become lost. Shipments would come in collect, freight charges collect and we would convert to a Government bill of lading at destination. That was really compulsory at the start due to the railroads having land grant rates with the Government.

Q. Now, by the phrase "at the start", what do you mean?

A. At the start of the job here, this job.

Q. That was in 1942 under the Manhattan District?

A. Yes.

Q. So, am I to understand that you are saying that from December, 1942 that it was compulsory to convert commercial bills of lading to Government bills of lading at destination?

A. Yes.

Q. Now, how long was that practice continued?

A. Up until May 12, 1948.

Q. Now, did the Government through that process of conversion get cheaper land grant rates?

A. Yes, up to October, 1946.

Q. And we all understand that land grant rates are cheaper than the ordinary commercial rates growing out of some relation of the Government to the land granted to the [fol. 325] railroads?

A. Correct.

Q. Now, you say that in October, 1946 the Government ceased to derive any benefit from land grant rates?

A. They did, by an Act of Congress abolishing land grant rates, the 79th Congress.

Q. Do I understand that there are no longer any land grant rates anywhere in the United States?

A. So far as I know, there is none.

Q. When it became apparent in that way in October, 1946 that there was no longer any saving in transportation expenses to be effected by the use of Government bills of lading or the conversion to Government bills of lading, what became the practice from October, 1946?

A. We continued to convert.

Q. Why?

A. Well, it was a procedure with the contractors or the purchaser, whoever bought the material.

Q. You continued the same procedure?

A. Yes.

Q. Was it mandatory or optional after October, 1946?

A. Optional.

Q. Can you say whether or not most commercial bills of lading were converted or not?

A. I would say from that period on, most of them were because most of the materials we were receiving at that time were on Government procurement orders or contracts.

Q. Now, in the case of procurements in the order of Car [fol. 326] bide & Carbon Chemicals Corporation beginning in October, 1946 were most of them converted or not?

A. On certain commodities, yes. Minor shipments were not converted.

Q. How about Roane-Anderson Company?

A. We converted practically everything for Roane-Anderson Company.

Q. Now, you have mentioned May, 1948. What happened then?

A. It was the change of policy between the Division of Finance of the Atomic Energy Commission and Carbide & Carbon Chemicals Corporation.

Q. What was the change?

A. Authorizing Carbide & Carbon to pay all freight charges.

Q. They did it with the purpose of converting to Government bills of lading?

A. Yes. Let me clear that up: except where it is on a Government purchase order or contract, it is still compulsory to convert.

Q. Even though there is no saving?

A. Yes.

Q. In the interim period from October, 1946 to May, 1948, the conversion to Government bill of lading did effect an avoidance of the three per cent Federal transportation tax?

A. That is correct.

Q. Taking the period prior to October, 1946, you have said that conversion of the bill of lading was mandatory; is that correct?

[fol. 327] A. Yes.

Q. Was that true, regardless whether or not shipment was F.O.B. the vendor or F.O.B. destination?

A. It didn't make any difference.

Q. Now, with particular reference to the cases here involved, Carbide & Carbon Chemicals Corporation, I have certain papers I want you to examine and file. Now, for the purpose of illustrating this conversion process and in order that the record may contain a more complete description of the method of handling procurements, I am going to hand you photostatic copy of the following papers: First, a bill of lading on a printed form printed apparently by the Tennessee Railroad Company, dated at Rosedale, Tennessee, November 4, 1947 from Diamond Coal Mining Company relating to car No. 284291. I ask you to identify and file that as Exhibit No. 22 in the Carbide & Carbon case.

A. I so file it.

Q. I believe that the next step in the actual handling of the shipment would be the preparation of the freight bill by the Southern Railway Company with which railroad

the Tennessee Railroad Company connects at Oneida; is that correct?

A. That's correct.

Q. I therefore hand you freight bill of Southern Railway Company dated November 7, 1947 bearing No. 20288 relating to Southern Railway car 284291 and ask you to identify and file that as Exhibit No. 23.

A. I so file.

Q. In the Carbide & Carbon cases. I hand you photo-[fol. 328] static copy of United States Government bill of lading No A. T. 17893 and ask you to identify and file that as Exhibit No. 24 in the Carbide & Carbon case.

A. I so file it.

Q. I notice, Mr. Rochstroh, that the Government bill of lading just filed covers not only Southern Railway Company car No. 284291 but also a number of other shipments from the Diamond Coal Mining Company. Does that indicate that the Government bill of lading was made to cover many of the commercial bills of lading?

A. It is mostly done to save clerical work.

Q. Now, finally, I hand you public voucher for transportation charges, that is a photostatic copy, No. 4015853 and ask you to identify and file that as Exhibit No. 25 in the Carbide & Carbon case?

A. I do so.

Q. Now, Mr. Rochstroh, was the same process used in the preparation of papers in the case of Roane-Anderson Company procurements as in the case of Carbide & Carbon Chemicals Corporation procurements that we have just described, namely, the issuance of a Government bill of lading?

A. Yes.

Q. And conversion and so forth?

A. Yes, I might explain something. This document prior to January 1st,—I am referring to the voucher Exhibit No. 25—prior to January 1st, 1947 all charges were paid, transportation charges were paid by the Finance Officer, United States Army, Washington, D. C. to the account of the Government until such time as the Atomic Energy Commission [fol. 329] mission took control of Oak Ridge.

Q. That was prior to what date?

A. January 1st, 1947.

Q. Mr. Rochstroh, do the Government bills of lading look alike as far as the printed form is concerned and I particularly direct my question at the Government bills of lading used in the Roane-Anderson Company case; do they contain the same provisions on the front and back in the original printed form as the Government bill of lading which you have filed as Exhibit No. 24 in the Carbide & Carbon case?

A. Yes.

Q. I will therefore ask you, to file as Exhibit No. 28 in the Roane-Anderson Company case a photostatic copy of the same paper that you filed as Exhibit No. 24 in the Carbide & Carbon case, being United States Government bill of lading No. A. T. 17893?

A. I do so.

Cross-examination.

By Mr. Humphreys:

A. Mr. Rochstroh, this process of conversion to a Government bill of lading, does it consist of taking from the ordinary bill of lading the car numbers, weights and charges and putting those on a Government bill of lading and paying it on that basis? Is that it?

A. No.

Q. What does it consist of?

A. Issuance of a Government bill of lading, attaching the commercial document, shipping document and copy of the freight bill.

[fol. 330] Q. That, of course, all occurs, I take it, after the goods have been ordered and received and the original bill is turned into your office and then the conversion takes place; is that right?

A. Yes.

Q. So that if Carbide & Carbon Chemicals Corporation—just taking a typical case—if Carbide & Carbon ordered a carload of coal and it came out—we are speaking now of the time prior to May 12, 1948—and it came out and they received the coal and a bill of lading covering the freight charges came with it, they turn it into your office and you all put it on a Government bill of lading and pay it on the Government basis; is that right?

A. That's correct.

Q. Now, I believe you say that in October, 1946 the Congress abolished the land grant rate benefits?

A. That is correct.

Q. Now, I believe you say that in October, 1946 the Congress abolished the land grant rate benefits by an Act of Congress and after that time it was optional whether you made conversion or not or whether you just went ahead and paid it on the original bill or convert it?

A. We converted practically everything after May 12th, for the reason that we were saving the three per cent.

Q. Why did you stop converting on May 12th, 1948?

A. That is a policy issued by the powers that be and Carbide & Carbon.

Q. Now, Carbide & Carbon makes the purchase and pays the bill of lading?

[fol. 331] A. That's correct.

Q. And, incidentally, pays the three per cent tax?

A. That's right.

Q. In other words, when it buys a carload of coal now from the Diamond Coal Mining Company, it orders the coal, it comes out and it gets the bill of lading and pays the three per cent Federal tax on the transportation?

A. Yes, on the transportation.

Q. And that has applied to shipments since May 12th, I mean the shipments to Carbide & Carbon?

A. On their own purchases, that is correct.

Redirect examination.

By Mr. Fowler:

Q. In order to get out of the three per cent Federal transportation tax the shipment has to move on a United States Government bill of lading, is that correct?

A. No, it can be converted to a Government bill of lading.

Q. Or has to be such as that conversion will take place?

A. Yes.

Q. And it is because no conversion is contemplated in the case of shipments on Carbide & Carbon's own order, that Carbide & Carbon goes ahead and pays the three per cent tax?

A. The only exemption is given to the United States Government on the three per cent transportation tax.

Q. On its own bills of lading?

A. Yes.

[fol. 332] Recross-examination.

By Mr. Humphreys:

Q. I believe you say that the Act only exempts the United States Government and that that is not considered as applying to purchases by Carbide & Carbon on its own billing originally; is that right?

A. If Carbide & Carbon pay the carrier by check they have to include the transportation charges or tax, rather, of three per cent.

And further deponent saith not.

R. J. Rochstroh, By A. C. Dore, Court Reporter.

Sworn to before me this 4 April, 1949. A. C. Dore,
Notary Public. My commission expires: 4-14-52.
(Seal.)

[fol. 333]

STIPULATION OF FACTS

Mr. Fowler: It is stipulated between counsel for the parties in all four of the cases to which the testimony already taken relates as follows:

(1) That the attachment hereto marked No. 29 in the Roane-Anderson Company cases and No. 26 in the Carbide & Carbon Chemicals Corporation cases is a photostatic copy of the regulations of the United States Atomic Energy Commission relating to control of source material to which the witness Charles Vanden Bulek referred on page 76 of his testimony, and that said exhibit may be received and considered as a part of the evidence.

(2) That the United States Government owns all of the land comprising the area known as the Clinton Engineer Works, including the town and townsite known as Oak Ridge, Tennessee.

Have I correctly stated our understanding as to this stipulation?

Mr. Humphreys: Yes, I think I can make this stipulation in regard to what you have in mind to undertake to prove by Mr. Vanden Bulek.

It is stipulated that all of the buildings on the land comprising the area known as the Clinton Engineer Works, including the Town of Oak Ridge, were built for the Gov.

ernment and belong to the Government and this stipulation is not to be considered as a stipulation on the part of the defendant that the materials and supplies from which these buildings *from which these buildings* were constructed were [fol. 334] the property of the Government before and at the time of incorporation into the buildings or were owned under such circumstances as to be exempt from sales or use tax liability, and our understanding is that we agree that this stipulation is not to be interpreted as being other than a fact bearing upon the issue, and does not stipulate the issue. Is that right, Mr. Fowler?

Mr. Fowler: That's right.

[fol. 335] IN THE CHANCERY COURT AT NASHVILLE, TENNESSEE

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

and

No. 65164.

WILSON-WEESNER-WILKINSON Co., and ROANE-ANDERSON
COMPANY.

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

STIPULATION AS TO EXHIBITS—November 14, 1949

At the hearing of the above-styled causes before the Special Chancellor, it was stipulated by counsel with the approval of the Court, that the various supplements to the main contract between Roane-Anderson Company and the United States of America entered into since the date of Supplemental Agreement No. 18, dated July 6, 1948, which Supplemental Agreement No. 18 is already filed as Exhibit 2 in this cause, should be filed as further exhibits, and it was [fol. 336] also agreed with the approval of the Court that the record of the negotiations between Roane-Anderson

Company, or its parent corporation, and the United States Government, should also be filed as an exhibit. Pursuant to said agreement, the following further Supplemental Agreements and record of said negotiations shall be filed as exhibits in this cause bearing the indicated exhibit numbers:

- Exhibit 30. Modification No. 19 dated October 1, 1948.
- Exhibit 31. Letter dated March 11, 1949.
- Exhibit 32. Modification No. 20 dated March 30, 1949.
- Exhibit 33. Letter dated May 17, 1949.
- Exhibit 34. Modification No. 21 dated June 17, 1949.
- Exhibit 35. Letter dated June 23, 1949.
- Exhibit 36. Form for negotiation for services of contractor on cost-plus-a-fixed-fee basis relating to the operation, supervision and maintenance of government facilities at Clinton Engineer Works and the Town of Oak Ridge, consisting of forty-four pages, 8 of which pages appear between numbered pages 21 and 22, and the 36th page appears as the last page, although numbered 21.

This October 22, 1949.

S. Frank Fowler, Solicitor for Complainants; Allison B. Humphreys, Jr., Solicitor for Defendant.

[fols. 337-339] Clerk's and Master's Certificate to foregoing transcript omitted in printing.

[fol. 340] IN THE SUPREME COURT OF THE STATE OF
TENNESSEE

CARBIDE AND CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

WILSON-WEESNER-WILKINSON and ROANE-ANDERSON
COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

PRAECIPIT FOR CERTIFIED TRANSCRIPT FOR USE IN THE SUPREME
COURT OF THE UNITED STATES, IN CONNECTION WITH PETI-
TION FOR WRIT OF CERTIORARI

[fol. 341] To the Clerk of the Supreme Court:

You are hereby requested to prepare and certify the entire record of the causes on file in the Supreme Court of Tennessee, together with the orders and opinion of that Court, except that the following portions shall be deleted:

1. Exhibit A and Exhibit B to each original bill, the same being included as Exhibits to the testimony of witnesses duly filed.

2. Exhibits 1 and 2 to Stipulation dated June 7, 1949, and filed June 10, 1949, Exhibit 1 being document published by the United States Government Printing Office entitled "A General Account of the Development of Methods of Using Atomic Energy for Military Purposes under the Auspices of the United States Government, 1940-1945," written by H. D. Smyth, and the Exhibit 2 being page 1-22, inclusive,

of the "Fifth Semi-annual Report of the Atomic Energy Commission of the United States Government," dated January 1949, being also a document published by the United States Government Printing Office.

It is recognized that Judicial notice may be taken of the entire contents of said documents.

3. The following documents are also agreed to be official documents of the United States Government and Judicial notice may be taken of the entire contents. Same are, therefore, deleted from the record:

[fol. 342] Hearings before the Committee on Military Affairs—House of Representatives, Seventy-Ninth Congress, First Session on H. R. 4280, October 9 and 18, 1945.

Hearings before the Special Committee on Atomic Energy, United States Senate, Seventy-Ninth Congress, Session on S. 1717, Part 1 and Part 3.

Hearings before the Special Committee on Atomic Energy, United States Senate, Seventy-Ninth Congress, First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearings before the Joint Committee on Atomic Energy, Congress of the United States, Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96, 80th Congress, 1st Session. Letter from the Chairman and Members of the United States Atomic Energy Commission.

Report No. 1211, 79th Congress, 2d Session, Senate Atomic Energy Act of 1946.

Report No. 1186, 79th Congress, 1st Session—House of Representatives—Atomic Energy Act of 1945, and Part 2 of Report No. 1186.

The exhibits filed in the consolidated causes which are not deleted by this praecipe shall be certified and transmitted to the Clerk of the Supreme Court of the United States in their original form, as allowed by the order of the Supreme Court of Tennessee.

(S.) Allison B. Humphreys, Jr., Attorney for Petitioner, James Clarence Evans, Commissioner of Finance and Taxation of the State of Tennessee.

(S.) S. Frank Fowler, Attorney for Respondents.
 (S.) Berryman Green, Attorney for Intervening
 Petitioner, United States of America.

[fols. 343-346] Clerk's and Chief Justice's Certificate to
 foregoing transcript omitted in printing.

[fol. 347] [Stamp:] Received May 17, 1951, Office of the
 Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1950

SAM K. CARSON, Commissioner of Finance, etc., petitioner,

VS.

ROANE-ANDERSON COMPANY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
 CERTIORARI

Upon Consideration of the application of counsel for peti-
 tioner,

It is Ordered that the time for filing petition for writ of
 certiorari in the above-entitled cause be, and the same is
 hereby, extended to and including August 6th, 1951.

Stanley Reed, Associate Justice of the Supreme
 Court of the United States.

Dated this 17th (seventeenth) day of May, 1951.